Democratising Migration Governance

Temporary Labour Migration and the Responsibility to Represent

Takeshi Miyai

Thesis submitted for assessment with a view to
obtaining the degree of Doctor of Political and Social Sciences
of the European University Institute

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Department of Political and Social Sciences

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Examining Board

Professor Rainer Bauböck, European University Institute (Supervisor)
Professor Richard Bellamy, European University Institute
Professor Iseult Honohan, University College Dublin
Professor Valeria Ottonelli, Università degli Studi di Genova

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Department of Political and Social Sciences - Doctoral Programme

I Takeshi Miyai certify that I am the author of the work 'Democratising Migration Governance: Temporary Labour Migration and the Responsiblity to Represent' I have presented for examination for the Ph.D. at the European University Institute. I also certify that this is solely my own original work, other than where I have clearly indicated, in this declaration and in the thesis, that it is the work of others.

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Abstract

This thesis explores the possibility of democratic citizenship of temporary migrants. The main problem I investigate is the persistent and systemic vulnerability of temporary migrants to domination. I argue temporary migrants' vulnerability to domination stems primarily from the fact that responsibilities towards them and their political membership are divided between their country of residence and of origin. While their lives are conditioned by both countries, they are democratically isolated from both. Are they merely partial citizens detached from any democratic politics? If not, what responsibility should each country bear towards temporary migrants within and beyond their jurisdictions? Should our commitments to democracy lead us to endorse a radical conception of migrant citizenship through which migrants represent their interests and perspectives in-between their country of residence and origin? This thesis addresses these normative issues surrounding temporary labour migration. It develops a democratic theory applicable to this phenomenon, explores the moral and political basis of migrants' freedom, and explains how the current arrangements might be changed to produce a more democratically just outcome. Its main contribution lies in establishing a new account of democratic citizenship and responsibility that coherently accommodates the political agencies of temporary migrants. The thesis introduces, in particular, a new normative concept and political agenda – the Responsibility to Represent (R2R). Under a system of R2R, both sending and receiving countries bear a shared obligation to stage migrants' contestatory voices in their public policy-making process for creating a society where everyone is free from domination. In summary, I argue that temporary migration programmes are just and legitimate, if and only if both sending and receiving states (1) recognise temporary migrants as bearers of a distinct life plan deserving equal treatment and non-domination, (2) provide them with necessary protections and sufficient resources for carrying out their plans while accommodating their possible changes, and (3) institutionalise contestatory channels for them to (de)legitimise the current structure of responsibility in-between two states.

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Chapter 1: Introduction

This thesis explores the possibility for temporary migrants to engage in democratic citizenship. The main problem I investigate is the persistent and systemic vulnerability of temporary migrants to domination. Temporary migrants are vulnerable to domination primarily because their political membership is divided between their country of residence and origin. While their lives are conditioned by both countries, they are democratically isolated from both. Are they merely partial citizens detached from any democratic politics? If not, what responsibility should receiving and sending countries bear towards temporary citizens? What democratic entitlements should they exercise at home and abroad?

I answer these normative questions by introducing a new normative concept and political agenda: the Responsibility to Represent (R2R). Under a system of R2R, both sending and receiving countries have a shared obligation to stage migrants' contestatory voices in their public policy-making process to create a society where everyone is free from domination. The background assumption is that temporary migrant workers are not free from domination unless they possess the capacity to challenge their under-representation in a transnational space. By examining this assumption, I attempt to allocate democratic responsibility to states and defend the need for migrants' citizenship, so that migrants' interests may be represented both in their country of residence and origin.

In this introductory chapter, the first section describes the background dilemma underpinning this research. The second section provides the research questions and aims. The third section discusses the knowledge gaps in the literature. The fourth section offers an outline of this thesis.

1.1 BACKGROUND DILEMMA

Temporary labour migration raises two challenges for democracies. Firstly, in receiving countries, it results in a form of second-class citizenship. In most democratic countries, temporary migrant workers are only partial citizens since they do not have the right to

vote or run for office. It is generally assumed that, since their length of stay lasts only for a limited period, their disenfranchisement is legitimate as it is in the case of tourists. However, unlike tourists, temporary migrant workers are migrants who have taken up residence and employment and are subjected to the socio-political structure of their country of residence. Can temporariness be a legitimate ground for their disenfranchisement? What responsibility should receiving countries bear towards them?

Secondly, sending countries face the problem of having partial citizens abroad. Temporary migrants often retain their ties to the sending country and intend to return after a certain period, even though this intention often changes depending on what turns their lives take. Also, since migrants' legal status in the receiving country is partly dependent on the recognition of their nationality, labour emigration policy also affects the interests of migrant workers. What responsibility should sending countries bear towards their citizens abroad?

When we juxtapose the two different challenges, the questions arise: which country should be responsible for migrant workers? Alternatively, from the perspective of migrants, which country is the addressee of their claims? Receiving country, sending country, or both? Temporary migrants are partial citizens in both sending and receiving countries. The starting intuition of this research is as follows: if temporary migrants are partial citizens of both countries, then they should be able to enjoy certain forms of democratic citizenship in both countries; similarly, if sending and receiving countries hold partial citizens within and beyond their territorial jurisdictions, then both countries should bear responsibilities for temporary citizens to enjoy certain entitlements of democratic citizenship.

Recent political development has brought special attention to temporary labour migration. Many developed countries have implemented renewed temporary migration programmes. Canada started recruiting migrant live-in-caregivers and seasonal workers in 2002, and the numbers of temporary migrants have so far increased substantially. The U.S. introduced new legislation to the Senate in 2013, proposing the creation of a new scheme of large-scale recruitment of unskilled migrant workers. In Europe, where Stephen Castles once wrote the "obituary" notice of guest worker programmes (Castles 1986), recently, the category of the guest worker has been "resurrected" (Castles 2006). Jean-Pierre Cassarino (2013) highlights the "drive for securitized temporariness" in EU member-states to respond to the problem of "flexicurity" in the post-industrial world. We

can discern similar but more pronounced trends outside of the West, including the Arabic Gulf States and East-Asian countries. According to a recent survey, nearly 90 per cent of labour migration programmes in the middle to high-income countries admit migrants on a temporary rather than permanent basis (Ruhs 2013, 74). Thus, as Nicola Piper (2010, 110) summarises, "the (re-)emergence of temporary and seasonal migration can arguably be described as a converging policy of almost global outreach."

At the core of the resurrection of temporary labour migration is a dilemma between open borders and equal citizenship. For liberals, a desirable labour migration policy should entail an admission of large numbers of migrants and enhanced rights with fair access to citizenship (see e.g. Carens 1987; 2013; Cole 2011; Kukathas 2014). This norm should apply especially to lower-skilled migrants, whose welfare is often far below the accepted level in the host states. However, many scholars assert that there is a trade-off or even a dilemma between these two demands. Martin Ruhs (2013) demonstrates that countries with large numbers of low-skilled migrants offer them relatively few rights and access to citizenship, while countries with smaller numbers of low-skilled migrants tend to provide them with greater rights and access to citizenship. Similarly, Daniel Bell and Nicola Piper (2005, 210) affirm that "[t]he choice, in reality, is between few legal opening for migrant workers with the promise of equal citizenship and many openings for migrant workers without the promise of equal citizenship." Importantly, sending countries and migrants evidently perceive this dilemma and often flinch from claiming rights and citizenship out of fear that receiving countries may baulk at admitting new workers (Ruhs 2013, chap. 6).

In these circumstances, international norms and cooperation over temporary labour migration are underdeveloped. According to Rey Koslowski (2011), there is a considerable variation in the degree of cooperation across the patterns of human mobility, and the "labour migration regime" is the least integrated compared to the "refugee regime" (highly integrated) and the "international travel regime" (somewhat integrated). Moreover, no developed country has ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (hereafter, ICRMW) adopted by the United Nations in 1990, which stipulates the most comprehensive set of migrant rights. The reluctance to ratify this convention can be explained by the perceived fear of receiving countries: signing up to these rights would further undermine the state prerogative of immigration control, which has eroded under

the post-war "self-limited sovereignty" (Joppke 1999) or "international human rights regime" (Soysal 1994). Therefore, temporary labour regulation signifies an important remaining area where "the last bastion of state sovereignty" (Dauvergne 2008) still reigns supreme.

How should we consider democratic citizenship of temporary migrants? In her study of Canadian seasonal workers, Jenna Hennebry (2012, 12) describes the life of migrants as "permanent temporariness," which is "a transnational life of going back and forth, largely beyond the control of the worker, belonging neither here nor there." Similarly, Anna Triandafyllidou (2013, 235) states that "[w]hat remains to be seen…is what kind of challenges such lives-in-circulation pose to democracy both at home and in the destination countries, as circular migrants are likely to belong to and participate in neither [state]." Moreover, in the host country context, temporary migrants often lack a sense of self-respect because they remain loyal to their home country (Ottonelli and Torresi 2012) While their enjoyment of citizenship is conditioned by both sending and receiving countries, they are democratically isolated from both.

It might be asked whether their isolation necessarily problematic from a democratic standpoint. Conventional approaches, namely fast-track naturalisation or enhanced protection of human rights, shy away from considering this phenomenon from the perspective of democracy. However, I contend that these strategies are unlikely to reduce the structural domination to which temporary migrants are exposed, let alone to foster mutual respect between sedentary citizens and temporary citizens. This thesis considers temporary migration as a democratic challenge. Are temporary migrants merely partial citizens distanced from any democratic community? What responsibility should sending and receiving countries bear towards partial citizens within and beyond their jurisdictions? Why might our commitments to democracy lead us to endorse a radical conception of migrant citizenship, through which migrants' interests and perspectives are represented in-between their country of residence and origin?

This thesis addresses these normative problems surrounding temporary labour migration. It develops democratic theory applicable to this phenomenon, explores the moral and political basis of migrants' freedom, and explains how to change the current arrangements to produce a more democratically just outcome. Its main contribution is to establish a new account of democratic citizenship and responsibility that coherently

accommodates the political agency of temporary migrants more than any other alternatives offered by the existing literature.

1.2 RESEARCH QUESTIONS AND AIMS

Against this backdrop, this thesis examines two research questions.

Research Question 1
What are the claims of temporary migrants to democratic citizenship in their countries of residence and origin and what responsibilities should these states bear towards them?

Research Question 2
How can we design institutional settings that enhance the democratic legitimacy of citizenship and migration policy in such a way that the dilemma between open borders and equal citizenship is democratically managed?

In answering these two questions, I want to contribute to the normative and policy debates about rights and citizenship for temporary migrants, whose lives are conditioned by, but democratically isolated from, both the countries of residence and origin. By answering the first question, I aim to establish a theoretical account of migrant citizenship and state responsibilities. I want to clarify, in particular, how the concepts of *non-domination* and *representation*, rather than of *inclusion* and *participation*, can better capture their (non-)enjoyment of freedom and the corresponding state responsibilities. I hope that this conceptual framework will capture the complexity of the situation and help us understand what facts we should take into account when developing policies for temporary migrants. By answering the second question, namely what institutional configuration best balances open borders and equal citizenship, I propose several institutional designs of temporary labour migration policy that are both normatively desirable and empirically feasible. I wish to stress, in particular, how both sending and receiving countries can address the vulnerabilities of temporary migrants to domination through the enhanced modes of transnational representation and responsibility sharing.

1.3 LITERATURE AND RATIONALE

In this section, I review the state of the art concerning my questions. As the literature touching on the topic is large and varied, I do not attempt to do a systemic overview here. Instead, this section is selective with a view to clarify the aims and rationales of this thesis. Each literature is discussed in detail in the following chapters.

I position this project at the intersection of three debates: the boundaries of democracy, representative democracy and international migration, and global governance and responsibility. I find gaps in each debate.

1.3.1 From inclusion to non-domination

Scholars have assumed, at least until recently, that international migration is a one-way process through which migrants become long-term residents and eventually citizens. In his classic work on membership, Michael Walzer (1983) criticised the German *Gastarbeiter* programmes as "tyranny," and insisted that every migrant must be offered the opportunity of acquiring full citizenship after a certain period. This view is broadly shared by theorists, and they have so far advocated a secure residential status, namely permanent residence, as the solution to temporariness (Rubio-Marín 2000; Carens 2008; Lenard 2012). They have thus asked how to *include* temporary migrants as equal citizens of a host state. However, instead of *inclusion*, I argue that *non-domination* is a more plausible concept for considering the problem of temporary migration.

Should temporary migrants be included as equal citizens? The preoccupation with the notion of inclusion is evident in the recent debate about the "boundary problem of democracy," which asks "who should be included in the demos or constituency when democratic decisions are taken" (Miller 2009, 201; Song 2012 for an overview). The discussion has generated several principles of democratic inclusion, such as the principle of affected interests (Goodin 2007), coercion (Abizadeh 2008), or "stakeholdership" (Bauböck 2015; 2018). Although this discussion challenges the neglected outer edges of democratic inclusion, the proposed principles provide us with little help when considering temporary migration. Valeria Ottonelli and Tiziana Torresi (2012) criticise the dominant principles as "liberal inclusivism" and explain why the idea of inclusion is incoherent for temporary migration. They argue that the idea is incoherent not only because temporary migrants lack adequate rights protection, but also because they orient

their life plans toward their home country. Due to this subjective orientation of belonging, temporary migrants are unlikely to demand inclusion as equal citizens in the host country. While I consider that Ottonelli and Torresi (2012) fail to take into account the *changing* nature of migrants' subjectivity, I agree that the notion of inclusion is not always suitable for discussing temporary migration because it usually captures temporary migrants only as objects of inclusion, not as autonomous subjects.

To understand the problem surrounding temporary migration, *(non-)domination* is more illuminating than the notions of inclusion and exclusion. Certainly, temporary migrants might not be included in both their countries of residence and origin simultaneously. However, they can nonetheless be free from domination if they are sufficiently protected and resourced to combat the arbitrary exercise of power in-between both countries. Even if temporary migrants constitute a deviation from the conventional view of equal sedentary citizens, we can pursue relational equality that temporary migrants can enjoy *qua* migrants. Rainer Bauböck (2011) correctly hints at this point: "Instead of asking what is needed to make temporary migrants equal with the sedentary citizens of their host or home countries, we can then consider what could make temporary migrants full citizens over the course of their lives" (Bauböck 2011, 689). Instead of advocating 'citizenship *for* migrants,' we can strive for 'citizenship *of* migrants'[1] through which they protect themselves from the arbitrary exercise of power in-between their countries of residence and origin.

How can we understand (non-)domination of temporary migrants? A theoretical contribution of my thesis is to connect this concept with another important concept, which has been largely neglected in migration research: *representation*.

1.3.2 Representative democracy and international migration

I argue that enhanced representation is the key to reduce the domination of temporary migrants. The concept of representation is a crucial element of the theory and practice of modern democracies. However, in the field of migration policy, normative scholars have paid little attention to this concept.

[1] This contrast is influenced by Linda Bosniak's seminal discussion on "citizenship of aliens", but her emphasis is still only on the side of receiving countries (Bosniak 2006).

Complaints about representation deficits appear widely in contemporary democracies and, in this regard, migration policies are no exception. Empirical theorists have argued that migration policy is "elitist" in nature and dominated by "client politics" (Freeman 1995) demonstrating a considerable "gap" between public will and policy-makers, and policy goals and outputs (Lahav and Guiraudon 2006). In contrast, normative scholars tend to characterise migration and citizenship policies as a crucial element of democratic self-determination (Walzer 1983; Benhabib 2004; Miller 2008). This raises a conflict: why does one party argue that there is a "gap" in migration policy while others maintain that migration policy should always express a democratic will? The answer is that this is a matter of perspective, depending on how one interprets the concept of representation. The former perspective focuses on the lack of substantive representation despite the existence of formal representation. In contrast, the latter conflates the two. The former is based on empirical evidence, but the latter is a normative claim, which does not necessarily correspond to reality.

If we admit the ambiguous relationship between migration policy and public will, it opens a new question: whose interests are, or should be, counted in migration policy? Is it true that only enfranchised citizens' interests are, or can be, represented in migration policy? Alternatively, can migrants' interests also be represented without full enfranchisement? If we can find that there are some grounds for counting migrants' interest in migration policies, then we can discuss not only how their interests are substantively represented but also how their interests should be represented. Instead of insisting on the formalistic boundary of representation, we can examine how the spheres of representation could be dynamically constructed and overlap between states.

Also, we should note the advocative and communicative function of representation (see Mansbridge 1999; Urbinati 2000). When is migration policy entirely legitimate? I maintain that even if all formal citizens agree on migration policy, its legitimacy is questionable unless it can account for the interests of those who are affected by this policy. Broadly speaking, the democratic deficits in migration policy can be characterised by the fact that (a) there is a growing disjuncture between popular will and migration control in both sending and receiving countries, (b) migrants have little voice over the admission rules that profoundly affect their interests, and (c) in so far as there is a transnational public sphere, it is not yet developed enough to make political debates visible to all citizens involved. In sum, the representation of migrants' perspective is important not

merely for protecting migrants from domination but also for enhancing the transnational democratic credibility of migration policies.

This research is also influenced by the recent "constructivist turn" in democratic representation theory (Saward 2010; Disch 2015). Constructivist scholars have attempted to break away from the conventional idea of election-centred representative politics and include activities and statements outside the electoral arena as part of representative politics. Indeed, what I mean by 'responsibility to represent' does not mean giving migrants the right to vote. Instead, we should seek a form of representation that is proportionate to their different stakes, including also a model of "citizen representatives" (Warren 2013), through which selected or appointed citizens represent themselves and function as supplements to elected legislative bodies.

Along with my conceptualisation of non-domination, the focus on representation helps us to obtain a complex picture of migration policy. This theoretical move is consistent with the recent scholarly renaissance of the concept of representation (for an overview, see Urbinati and Warren 2008), which provides a sophisticated conceptual tool to discuss migration policy. However, while scholars have re-employed this concept in new fields, such as cultural and ethnic minority rights (Phillips 1995; Williams 1998), and global democracy and justice (Kuper 2006; Macdonald 2008), few scholars have investigated migration policy through the lens of democratic representation. This research aims to fill this gap.

1.3.3 Global governance and the responsibility of states

Thirdly, this thesis positions itself within the literature on global governance and responsibility. While I have so far discussed the normative debates about international migration and democracy, there are other contributions to the literature about temporary migration. Arguments from political theory have been developed recently, and still have not been integrated into the mainstream discussion of temporary migration.

Given the paucity of arguments from political theory, two other approaches are dominant in the literature: *the human rights approach* and *neo-institutionalism*. The former is commonly employed by many UN agencies, NGOs and activists that demand states comply with the rights enshrined in the ICRMW. There is, of course, nothing wrong with advocating for a human rights-centred approach. However, major immigration

countries are very reluctant to ratify the ICRMW, and sending countries are also burdened by what Martin Ruhs (2013) describes as a "trade-off" between rights and numbers. I contend that mere campaigns for human rights are insufficient to produce practical results.

At this point, the recent neo-institutionalist turn merits closer inspection. Neo-institutionalism upholds states' active roles in pursuing their national interests under some "liberal constraints" (Hollifield 2008; Boswell 2007). Based on this perspective, Ruhs and others argue that any temporary labour migration programmes inevitably involve "second-best" policies that lead to "dirty-hands" solutions because it is impossible to satisfy the demands for open borders and equal citizenship simultaneously (Ruhs 2013, chap. 7; Chang 2002; Mayer 2005). For neo-institutionalists, the best we can hope for is to find a better pragmatic balance between the two conflictive demands. However, what is missing from this debate is democratic responsibility for migration policy. How can such institutional arrangements be publicly approved? To what extent should we account for migrants' interests? While I admit that we need certain compromises in implementing temporary migration programmes, I qualify the pragmatic arguments that do not refer to the value of democracy.

To produce a democratically justifiable outcome, we need a theory that allocates democratic responsibility to specific agents. Neither the human-rights approach nor neo-institutionalism can carry out this task because they have meagre theoretical resources to allocate such responsibility. Therefore, this thesis will not only fill the scholarly gaps but also provide a necessary theoretical complement for the democratic transformation of migration policies.

1.4 THESIS OUTLINE

In this section, I illustrate how my argument proceeds. This thesis consists of eight chapters, including this introductory chapter.

In Chapter 2, I set out the central dilemma of this thesis, 'the challenge of temporariness.' The challenge of temporariness refers to the theoretical and practical problems which arise from temporary movements and the way to accommodate the needs and agency of temporary migrants in a feasible and morally defensible way. I begin by clarifying the meanings and types of temporariness. First, I distinguish between

intentional and *jurisdictional* temporariness as a matter of meaning, and between irregular, regulated, and unregulated temporariness as a matter of type. I argue that both intentional and jurisdictional temporariness make temporary migrants vulnerable to social and governmental domination. Against this conceptual backdrop, I survey how intentional and jurisdictional temporariness is empirically structured with particular attention to recent proposals of a *triple-win* and the related trend of *governmentalisation* of temporariness. Under these circumstances, the lives of temporary migrants are increasingly 'governed' in-between their countries of residence and origin. While their enjoyment of citizenship is conditioned by both sending and receiving countries, they are democratically isolated from both. How can we deal with this democratic challenge of temporariness?

Chapter 3, 'The Myth of Sedentariness,' reviews the existing accounts for and against temporary migration programmes and identifies the normative research gaps. Following Joseph Carens (1996), I distinguish between "idealistic" and "realistic" approaches to the ethics of migration. On the one hand, idealists presuppose that temporary migration is a non-ideal pattern of human mobility, inevitably involving the problems of exclusion, exploitation, and/or domination. While there are few systematic elaborations of what justice requires about temporary migration, a lesson learnt from idealistic arguments is that we should abolish temporary migration in order to keep our hands 'clean.' On the other hand, by explicitly acknowledging that temporary migration involves 'second-best' policies that 'dirty' our hands, realists abandon the search for the normative coherence and propose pragmatic solutions. While their proposals could improve the condition of temporary migrants if adequately implemented, it is difficult to understand how we should assess and weigh the conflictive interests involved in 'dirty-hands' policies. The gap I identify is twofold. First, most scholars consider temporary migration as a non-ideal or problematic pattern of mobility based upon the unwarranted anthropological assumption of the sedentariness of human being. Second, few scholars consider the challenge of temporariness as a democratic one. Instead, they treat temporary migrants as mere recipients of rights or objects of inclusion, rather than as active subjects of autonomy and life plans. I claim that the issue at stake is not the lack of prudence or unfeasibility of normative principles but the deficit of democratic ideals regarding mobile individuals whose political membership is divided between two or more states.

The following three chapters are devoted to constructing a theoretical account of democratic freedom and citizenship applicable to temporary migrants. In Chapter 4, 'Freedom and Temporary Migrants,' I propose a domination-based framework of freedom building on the neo-republican literature. After explaining the conceptual advantages of (non-)domination compared to other related concepts and rival conceptions of freedom, I take up the task of constructing a new conceptual framework of (non-)domination. I defend, more precisely, the following conception of non-domination: individuals or groups are not vulnerable to domination to the extent that they are sufficiently protected and resourced (1) to exercise functional capabilities over a suitable range of choices (non-vitiation) and (2) to exercise contestatory power if they are exposed to arbitrary power (non-invasion). The theoretical contribution of my account is twofold. First, I clarify the central importance of the sufficientarian threshold of non-vitiation as the necessary condition for non-domination. Second, I offer a modified conception of arbitrariness, namely, arbitrary power as uncontestable power. In the final section, I argue why we should reduce and minimise domination of not only sedentary citizens but temporary migrants, and how such an imperative is related to state duties.

Chapter 5 explores the nexus between temporary migrants and vitiation with particular attention to the concept of "temporary migration projects (TMPs)" (Ottonelli and Torresi 2012; 2014). Distinguishing between 'temporary immigration projects' (TIPs) and 'temporary emigration projects' (TEPs), I examine the conditions for migrants to carry out their distinct life plans without domination. I show how sending and receiving states can reduce the vulnerabilities of temporary migrants to societal dominations through exit-based and voice-based empowerments. At the same time, I claim that we should accommodate the possible changes and updates of their life plans, which require states to adopt some remedial measures for counting their "political time" (Cohen 2018). In short, temporary migration programmes are just to the extent that both sending and receiving countries sufficiently protect and resource temporary migrants to carry out their migratory projects while fairly accommodating its possible changes.

Chapter 6 examines the nexus between migrants and invasion or migrants and legitimacy of migration policies. On my conception of non-domination, migrants cannot be free in the fullest sense unless they are politically empowered to contest the decision that possibly hinders their choices. The question is how such contestatory voices can be instituted in practice. Does it mean enfranchising temporary migrant on the equal footing

with sedentary citizens? My answer is that equal enfranchisement is not required. Instead, I claim that there is a good reason for differentiated transnational citizenship for temporary migrants. While it is not required to fully enfranchise temporary migrants in a host state, there is a firm ground for giving them a contestatory voice against migration policies in both sending and receiving countries. I argue that such differentiated citizenship can be justified by re-interpreting the principles of democratic inclusion, namely, the principles of affected interests, coercion, and stakeholdership. After justifying differentiated inclusion, I compare and examine the possible contestatory channels, proposing the introduction of immigrant/emigrant councils as the most promising way to realise this end. Hence, temporary migration policies are legitimate to the extent that temporary migrants have the power to contest citizenship and migration policies of both countries *via* institutionalised contestations.

Chapter 7, 'Towards the Responsibility to Represent,' synthesises the arguments of this thesis and answers the main puzzle: What responsibilities should sending and receiving states bear towards temporary migrants? After defining the concept of state responsibility, I propose a threefold framework of state responsibility in relation to international migration, namely, Responsibility to Protect (R2P), Responsibility to Care (R2C), and Responsibility to Represent (R2R). After depicting how the three responsibilities interact with the freedom of temporary migrants, I underline why R2R plays the crucial role in legitimising migration and citizenship policies but also in creating a transnational society where everyone is free from domination. At the same time, I examine the possible limits of R2R by considering hard cases R2R conflicts with other state responsibilities. I argue that the state responsibilities can be justified only on the condition that they serve to reduce or minimise domination. This limitation means that state intervention, which unjustifiably burdens other countries, or illiberal practices which may threaten democratic stability, are illegitimate. Yet, given that state responsibilities have their limits, the directions of policy change should be towards higher levels of R2R and not lower ones.

The concluding chapter summarises the overall arguments, considers the limits of scope and arguments of this thesis, and outlines directions for future research.

Chapter 2: The Challenge of Temporariness

INTRODUCTION

Most states 'receive' or 'send' temporary migrants. For receiving states, they are immigrants who take up residence and work, but are expected to return to their home states after a certain period. For sending states, they are emigrants who choose to live abroad for a certain period and may decide to stay on indefinitely. Temporary migrants are immigrants and emigrants at the same time. As such, they hold a hybrid political relationship with two or more states. The challenge of temporariness refers to the theoretical and practical problems which arise from this hybrid pattern of human mobility and, in particular, deciding on how the needs and agency of temporary migrants might be accommodated in a realistic and morally defensible way.

In 2005, the Global Commission on International Migration concluded that "the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration," underlining the importance of "consider[ing] the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination"(GCIM 2005, 31, 16). Although research on the developmental potential of circular and return migration is relatively recent (Vertovec 2008; Sinatti 2015), temporary migration is not new. In the nineteenth century, Adam Smith already identified wage and price differential as a driving force of regional migration (Smith 1993, bks. 1, chapter 8). Marx and Engels foresaw the development of capitalist relations and a revolutionary force through Irish seasonal workers in Great Britain (Anderson 2010, chap. 4). Temporary migration has always been an essential pattern of human movement; however, what is novel is not temporary migration *per se* but our attention to it. Whereas temporary migration is not new, the configuration of power surrounding this phenomenon has dramatically changed. This chapter aims to synthesise the contemporary challenge of temporary migration.

In the first section, I argue that existing conceptions of temporariness are under-defined and fail to capture the needs and agency of temporary migrants. I propose, instead, a structurally nuanced conception of temporariness. My account flows from an

understanding of the concept of temporariness in two interrelated ways: intentional and jurisdictional. I explain how this conception is related to its opposite, intentional and jurisdictional permanence. Compared to the existing account of temporariness, I believe that my conceptual framework of temporariness and permanence puts us in a better position to determine what temporary migrants need *qua* temporary migrants and how their enjoyment of membership is structurally conditioned by both sending and receiving countries. Based on this conception, in the second section, I offer a typology of temporariness: irregular, regulated, and unregulated. The third section considers the theoretical risk of treating temporary migrants as a 'group' and instead argues for considering them as a 'serial collective' (Young 1994). In the fourth section, I argue that intentional and jurisdictional temporariness renders individuals vulnerable. In the fifth section onwards, I examine how intentional and jurisdictional temporariness is empirically structured, with particular attention to recent proposals of a *triple-win* and the related trend of *governmentalisation* of temporariness.

The age of migration has entered a new stage. Under the inter-governmentalisation of temporariness, the lives of temporary migrants are increasingly 'governed' in-between their countries of residence and origin. While their enjoyment of citizenship is conditioned by both sending and receiving countries, they are democratically isolated from both. How can we deal with the challenge of temporariness?

2.1 THE CONCEPT OF TEMPORARINESS

Temporary and permanent migration has been a key vocabulary in the discourse and policy of international migration. However, despite its centrality for migration policy, the conceptual difference between temporariness and permanence is not apparent.

What does the adjective 'temporary' mean? Lexically, temporariness is the negation of permanence: not permanent. Indeed, we usually understand the difference between temporary and permanent migration as a matter of the duration of stay. However, what is temporary and permanent is not always easy to distinguish.

In official documents, there is no standard threshold for distinguishing temporariness and permanence. Many existing definitions are designed for statistical purposes. For example, the United Nations recommends distinguishing short- and long-term migrants by a specific time period. It defines a short-term migrant as "a person who moves to a

country other than that of his or her usual residence for at least three months but less than a year" (United Nations 1998, 95). By comparison, it defines a long-term migrant as "a person who moves to a country other than that of his usual residence for a period of at least a year (12 months)." Interestingly, it states that one year is sufficient "so that the country of destination effectively becomes his or her new country of usual residence" (United Nations 1998, 95), but it does not explain why.

The International Organization for Migration (IOM) defines temporary (labour) migration as "migration of workers who enter a foreign country for a specified limited period before returning to the country of origin," without specifying any time-frames (IOM 2011, 97). In the European Union, Council Directive 2003/109 defines temporariness negatively by requiring five years of "legal and continuous residence" at a minimum in a member state to be considered "permanent."[2] The definition and extent of 'temporary' residence also varies greatly outside EU member states, ranging from three months up to five successive years (On the variety of official definitions of temporary migration, see Carrera, Eisele, and Guild 2014).

These time-based definitions inevitably beg the question: how can such a specific time-frame distinguish temporary and permanent migration? This problem has not gone unnoticed. For instance, the OECD cautiously underlines the ambiguity between the two categories by stating "when workers are allowed to stay longer than several years, it is legitimate to ask whether the term 'temporary' is really appropriate to describe the situation" (OECD 2014).

If it is difficult to distinguish temporary and permanent migration by a specific time-frame, is there any alternative? The concept of temporariness can be understood in various ways without referring to a specific time-frame (see also Bauböck 2011). One way is to focus on the fact of return. In this case, the difference between temporariness and permanence is defined *retrospectively*. Temporary migration is distinguished from permanent migration when a migrant leaves his or her country of residence and returns to their country of origin. As long as they stay in their country of residence, they are presumptively permanent; if they leave, they are *proved* to be temporary. However, if permanence can only be understood in this way, it cannot explain the analytical difference

[2] Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-Country Nationals Who are Long-Term Residents, 23 January 2004, OJ L. 16-44, 23 January 2004.

between permanence and temporariness because it simply describes a binary fact: temporariness is the end of permanence, and vice-versa.

My starting point, in contrast, is to turn our attention from the fact of time and return to the structural feature of temporariness and permanence. In his analysis of temporariness in international law, Rene Uruena (2014) observes the difference between temporariness and permanence based on a particular view of change: "[t]he idea of 'permanence' implies a negation of change—or at least its pause for a considerable amount of time. Temporariness, on the other hand, suggests the potential of change—'this is temporal' means this is 'subject to change'. Permanent, in contrast, means, closed for change"(Uruena 2014, 21). Here, the point of reference is not time as such. Instead, the difference lies in the potential for change. The difference between temporariness and permanence is relative; one is relatively open to change while one is relatively closed to change. It is concerned with the relative openness and closure to change.

This conception can help us escape the trap of the conceptual dichotomy between temporariness and permanence. Permanence or permanent residence does not mean that all citizens or permanent residents stay there without interruption. Permanent residents may be deported when certain conditions are met. Even some naturalised citizens can be de-nationalised and forced to leave (see Gibney 2013). Sedentary citizens can also leave should they want to. As a conceptual matter, therefore, temporariness and permanence should not be understood as a binary dichotomy. Instead, the division between temporariness and permanence is to be understood as the structural relationship of *power* between an individual's choices to stay and leave and the state's range of interference over them.

I believe that a more nuanced theoretical account of temporariness should encompass the complex political relationship involved in the structure of temporariness. The famous dictum of "there is nothing more permanent than temporary migrants"(Martin 2003) not only refers to the historical fact that many migrants initially admitted on a temporary basis eventually settled in Europe and North-America, but also suggests the changing and dynamic interaction between the institutional expectations and subjective intentions of migrants. It is this dynamic that should be theorised by any account of temporariness.

I understand temporariness and permanence in two interrelated ways: intentional and jurisdictional. Intentional temporariness or permanence focus on the *subjective intention* of migrants to stay in the country of residence. Individuals are intentionally temporary if

they intend to stay in a country for a *definite* period. Individuals are intentionally permanent if they intend to stay in a country for the *indefinite* period.

Valeria Ottonelli and Tiziana Torresi (2012) understand temporary migrants as a specific type of people who commit a specific life plan, which they call "temporary migration projects." Ottonelli and Torresi (2012, 208) define temporary migration as "migrating to a foreign country for a limited span of time, with the purpose of sending money home or acquiring knowledge and expertise needed to advance specific aims once back in one's country (children's education, building a house, supporting a family, starting a new business activity, etc.)." We usually visit a foreign country for sightseeing. International students come to acquire skills and knowledge for their future career, while refugees and asylum seekers leave their country to escape suffering and fear. The intentional conception of temporariness looks at the migratory decision from the perspective of migrants as the active subjects of autonomy, rather than the passive objects of control. We should take into account this intentional dimension of temporariness. *A fortiori*, not all individuals are intentionally permanent. This conception can cover a wide range of human mobility or de facto temporariness, including inter-local mobility within state jurisdiction and inter-state mobility within a regional polity such as the EU. However, a drawback of this conception is that it cannot answer the question of *who is temporary* because one's intention may change depending on what turns their lives take. An intentionally permanent citizen may decide to leave for another country for a specified period, while an intentionally temporary migrant may change their plan to stay longer.

To answer the question of who is considered a *temporary* migrant, we should consider the institutional condition of temporariness and permanence. Individuals are jurisdictionally temporary if they are legally permitted to stay in a country for a definite period. Jurisdictionally temporary migrants may become jurisdictionally permanent if they acquire permanent residency or the citizenship of a receiving country. Martin Ruhs (2006, 9) defines temporary (labour) migration as the movement of people whose "residence and employment by a temporary work permit alone do not create an entitlement to stay permanently in the host country." Manolo Abella (2006, 4) defines them as migrants "whose legal status is temporary, regardless of the amount of time they may have stayed in a country." This institutional conception of temporariness can answer the question of *who is temporary* by referring to the residential status of migrants.

By combining the intentional and jurisdictional conceptions of temporariness, we can clarify some issues. Firstly, it subjects the question to a consideration of an individual's life plan. Temporary migrants are not material objects but subjects who deserve equal concern and respect. The movement of people, therefore, raises the question of which authority should promote the rights of migrants to equal concern and respect. This premise of equal concern and respect covers all dimensions of one's social life. A young researcher may study abroad because he wants to acquire more in-depth academic knowledge or to build his international career; some migrants may work abroad under oppressive conditions to sustain their family in her homeland; other people may come without permission to escape from suffering and torture. It is impossible to generalise their life-course. However, insofar as the migratory decision is driven by an intentional act taken for a better life prospect, their choice involves almost all dimensions of social life. In this way, the central question concerns which authority should be responsible when their choice is vulnerable to the arbitrary power of another.

Secondly, because we respect such individuals' autonomy, the issue of the jurisdictional structure comes naturally to the fore. It is crucial to understand that their decision to stay is not independent, but socially dependent on how the protection of their decision is embedded in the international structure of states. What changes in temporary migration? At one level, it is the place of residence where migrants live. However, migration not only involves the changes in their location. Temporary migration changes the political relationships of how individuals are jurisdictionally associated with political authorities. As Aristides Zolberg (2006, 11) observes, international migration is "an inherently political process," which "entails not merely movement from one place to another, but derives its specificity from the organisation of the world into a congeries of mutually exclusive sovereign states, commonly referred to as the 'Westphalian system.'" International migration involves demarcating jurisdictional responsibilities; that is, state duties to administer justice and responsibility encompassing all social lives of people within it.

Yet, the jurisdictional change brought around by international migration is not absolute but relative. Every state distinguishes between people who can stay or return freely and people who cannot. For example, many would agree that the receiving states have no particular responsibility for visitors and tourists. While their basic civil rights should be protected, few people would argue that they should be given the same rights and

obligations as resident citizens. The basic protection which enables them to visit and transit would be sufficient, and it is their country of origin that is responsible for their further claims and needs. At the same time, we tend to think that the receiving states should be more responsible for migrants who established long-term or permanent residency. In fact, the mainstream scholarship argues that the passage of time is the key to regulating this transition of responsibility (see Chapter 5 of this thesis). As Joseph Carens (2008, 419) summarises this view, "the longer the stay, the stronger the claim to full membership in the society and to the enjoyment of the same rights as citizens, including, eventually, citizenship itself." Many scholars affirm the different degree of responsibility depending on how long migrants have stayed and how deeply they have cultivated the social and political ties to a country.

From the perspective of the state, both sending and receiving countries bear *some* jurisdictional responsibility towards temporary migrants within and beyond. Yet, the share and spheres of responsibility are unsettled and open to change. As we will see in the later chapter, migrants can claim *some* rights in both states. Yet, the range and entitlement of their rights are also unsettled and open to change. Sedentary citizens refer to individuals who hold a single and complete jurisdictional relationship with their country of residence. In principle, all temporary migrants can become sedentary citizens either by returning to their country of origin or by acquiring the citizenship of the country of residence.

Intentional and jurisdictional temporariness is deeply embedded in the structure of states, which in turn conditions individuals' autonomy and their context of choice.

2.2 THREE TYPES OF TEMPORARINESS

I have so far discussed that temporariness and permanence can be understood in intentional and jurisdictional terms. From a theoretical perspective, we can distinguish three different patterns of temporary mobility by combining the intentional and jurisdictional conceptions of temporariness: regulated, irregular, and unregulated temporariness. Having distinguished the three types of temporariness, the primary focus of this thesis is on regulated temporariness. Regulated temporariness is the most common type of temporariness produced by temporary migration programmes. While it is true

that these three types are interrelated, I do not address unregulated and irregular temporariness except in a peripheral way.

2.2.1 Regulated Temporariness

Regulated temporariness refers to regular migration of people across the state jurisdictions whereby they are jurisdictionally temporary. Hence, this pattern of temporariness is *de iure*. This pattern occurs when one migrates to a country where he or she does not have permanent residency or citizenship. This is the most typical pattern of temporariness in our contemporary world. The cases include international students, migrant workers, most re-unified family members, tourists and visitors, passengers, temporarily protected status holders, asylum seekers, and so on. These people are expected or forced to leave the country of residence, or they may be permitted to become a permanent resident or citizen after a period of residence.

Institutionally, regulated temporariness consists of two different categories. The first is those who are admitted for a specific period without an option to apply for permanent residency or citizenship. A residence permit that these migrants usually hold has a specific expiry date and is not renewed. Thus, the host countries anticipate that they will leave at the end of the period. The second category is those who are initially assigned temporary status but can change it into permanent status at the end of a relevant period either automatically or under certain conditions. While many past guestworker programmes in Europe were designed as non-renewable, the possibility of renewal and the expansion of the rights and access of migrants to permanence and citizenship were gradually introduced. A similar development can be identified in the immigration states in Oceania and North America.

The difference between these categories is important. For intentionally temporary migrants, the access to permanent residency and citizenship might not, at least initially, be a pressing concern. However, the non-renewal proviso will cause a conflict if their intentions change. Because the receiving states usually expect them to return, it raises the issue of whether they can legitimately dismiss their application for permanent residency and citizenship. I will return to this critical question at a later point in the thesis. With regard to tourists, passengers, and international students, this issue is not usually

considered a morally pressing problem. If their rights are sufficiently protected for their specific purpose, states can legitimately encourage or force them to leave and return.

The issue, however, raises a morally-pressing challenge when we consider migrant workers, especially low-skilled labour migrants leaving poorer for richer regions. While many past guestworkers were eventually permitted to become permanent residents or citizens, their permanent settlement is perceived as a 'failure' by policymakers and citizens in wealthy countries. However, as I have argued, this perceived 'failure' ignores the intentional dimension to migration.

2.2.2 Irregular Temporariness

Irregular temporariness refers to the migration of people across state jurisdictions where they are *not* permitted to stay. This category refers to undocumented or illegal migrants. There are some channels for generating this pattern. One may enter the country without permission. Others become irregular when they do not leave when their permission has expired. Since they are not permitted to stay, the state may take three alternative policy courses. Firstly, the state may tolerate their presence without legalisation. Although they may enjoy some basic rights, their status is precarious. Secondly, the state may deport them to their country of origin. While this is the most straightforward solution for irregularity, a state's decision to deport cannot be taken without coordination with their country of origin. Thirdly, they may legalise their irregularity and hence change their status into regulated temporariness.

Irregular and regulated temporariness are interrelated. For a large part, the primary motivation of irregular movement lies in the difficulty of getting a regular and official permit to enter the country. Except for terrorists and smugglers, it is unreasonable to assume that migrants themselves elect to become irregular migrants. Indeed, as we will see in the fifth section of this chapter, one of the main rationales of the recent expansion of temporary migration programmes is to reduce the number of irregular migrants by creating an easy and official path for migrants while, at the same time, limiting their access to permanence, which is perceived as a social cost for the receiving countries.

2.2.3 Unregulated Temporariness

Unregulated temporariness refers to the migration of people across state jurisdictions where they have an unconditional right of residence in two or more states. For instance, citizens who have multiple citizenships can enjoy the right of free movement between two or more states. Since their decision to stay and exit is no longer regulated by their home states, it is considered as a pattern of *de facto* temporariness. EU citizens can enjoy similar rights of free movement across member states, although there are some limitations. While the scope is not international, internal migration across municipalities or provinces is also considered as a case of unregulated temporariness. From the perspective of migrants, unregulated temporariness is only available in certain countries where they hold permanent residency or citizenship. The same person may generate a pattern of regulated temporariness when they move to other countries where they are not jurisdictionally permanent. Institutionally, unregulated temporariness would be the most enhanced form of temporary mobility, which virtually lets individuals decide whether they want to stay or leave in two or more jurisdictions.

The number of people who can enjoy unregulated temporariness is growing but still limited. The countries with a long-standing tradition of immigration have long operated various programmes which immediately attribute permanent residency to migrants. Of importance is the beneficiary of such immediate access to unregulated temporariness. These programmes have been extended to highly skilled immigrants and close family members of citizens or permanent residents.

However, in the past decades, many states have implemented various programmes to attract wealthy immigrants by exchanging visas and citizenship for a significant investment in their economies (Henley&Partners 2015). They provide such 'desirable' migrants with privileged access to the territory and market as a ‘prize’ to encourage their continuous contribution to the state economies. It is important to note that while they may be expected to stay in a country physically, this is not always necessary. Under the “global race for talent” (Shachar 2006), competitive and wealthy migrants are highly mobile and enjoy “flexible citizenship,” “respond[ing] fluidly and opportunistically to changing political economic conditions” wherever they reside (Ong 1999, 7). Regulated and unregulated temporariness is interrelated. Once states permit migrants to enjoy unregulated temporariness, they become unable to interfere with their decision to stay. This uncontrollability gives policymakers a rationale not to overextend the beneficiaries

of free movement. This is the case for lower-skilled migrants and their families, who are expected to make a smaller financial contribution and generate greater welfare costs than higher skilled migrants.

2.2.4 Temporariness and Sending Countries

It is also crucial to understand how these patterns relate to sending countries. Despite the long-standing critique of "methodological nationalism"(Basch, Glick Schiller, and Szanton Blanc 1994), the mainstream scholarship on migration still focuses on the incorporation and integration of immigrants into their host societies. The conception of temporariness also suffers from this paradigm. As Christian Dustman (2000, 220–21) notes, "the term 'temporary' is used from the perspective of the host country: a migrant is a temporary migrant, even if he leaves the home country permanently, as long as he only remains temporarily in the host country." For a receiving state, temporary migrants are resident non-citizens. For a sending state, temporary migrants are non-resident citizens. As we will see, sending states also play an important role in conditioning or even governing temporariness. The migratory decisions by temporary migrants are also influenced and conditioned by their country of origin even if they are absent from its jurisdiction.

All three types of temporariness presuppose that every person is at least jurisdictionally permanent in their sending country. As an external citizen, they would enjoy the range of rights and obligations attached to "external citizenship," including the unconditional right of return and the right to diplomatic protection, and in many cases, external voting rights (Spiro 2006; Bauböck 2007; 2009). While there are many reasons for intentional temporariness, the cultural or political ties to their community of origin matter. Migrants remain intentionally temporary because they locate their social basis of self-respect and self-realisation in their country of origin rather than their country of residence.

Let me elaborate on how we can understand temporariness in relation to the sending countries. The three patterns of temporariness not only refer to the degree of mobility rights which individuals can enjoy in the country of residence, but also suggest their jurisdictional relationship with sending countries. Unregulated and regulated temporariness presuppose that migrants' movement is mutually recognised by their

country of residence and origin. This mutual recognition implies that sending countries do affect individuals' choice to move.

Historically speaking, the restrictions placed on citizens' rights to exit were commonly used by mercantilist and authoritarian states (Dowty 1987). While the right to leave has already been enshrined in most significant human rights treaties and constitutions, there are several ways for sending states to affect their external citizens. For instance, sending countries may oblige legal emigrants to return and sanction them if they do not comply with their duties.

The external obligation is found in some state-funded emigration programmes, such as international students with a grant from a national government and temporary migrants who use the programme based on a bilateral agreement. In the case of the Japanese Technical Intern Training Programme (*Ginoujisshu Seido*), all trainees bear an obligation to return in order to transfer the skills and knowledge to the benefit of their home country. It is reported that many Chinese trainees pay brokering deposits before applying for this programme and may not be recompensed if if they stay longer than permitted or come back before the end of the programme.

Restrictions on dual nationality also oblige external citizens to choose one citizenship if they want to naturalise. David Owen (2014, 99) argues that "the imposition of loss of citizenship on the acquisition of new citizenship would constitute an arbitrary exercise of public power." Temporary migrants face such restrictions on temporariness in relation to their countries of origin.

Sending states also matter in the case of irregular temporariness. Jurisdictionally speaking, the irregularity of temporariness is defined in relation to the receiving country. Compared to regulated and unregulated temporariness, it is generally difficult for sending states to identify those who are irregular. Yet, as in the case of undocumented Mexican migrants in the U.S, if there is a large migrant community, they are often recognised and offered protection as external citizens by their country of origin (Fitzgerald 2009; Délano 2011). Moreover, except for regularisation, the typical end of irregular temporariness is the return to their countries of origin. Cooperation between receiving and sending countries is needed to facilitate either assisted or forced return policies.

2.2.5 Temporariness and Transnational Citizenship

Broadly speaking, the membership which temporary migrants enjoy constitutes a specific type of 'transnational citizenship,' which Rainer Bauböck (2007, 2395) defines as "a triangular relationship between individuals and two or more independent states in which these individuals are simultaneously assigned membership status and membership-based rights or obligations." He underlines the inextricable link between the membership of immigrants and emigrants by using the analogy of a coin: "'[d]enizenship' and long-term external citizenship are […] two sides of the same coin, and the value of this coin regarding rights and opportunities cannot be determined by looking at one side only"(Bauböck 2009, 477). While the objects used in this analogy are not temporary but permanent, this understanding is also crucial in the context of temporary migration. It is no wonder that there are variations and different configurations of transnational membership which temporary migrants enjoy. As I will explain later, the triangular relationship between temporary migrants and the countries of residence and origin is unstable, provisional, and transitive compared to the rules for the resident citizenry within and beyond their jurisdictions.

2.3 TEMPORARY MIGRANTS AND GROUP AGENCY

As I have argued, temporariness can be understood either intentionally or jurisdictionally. While I believe that this conception is workable for my theoretical inquiry, it would be useful to reply to some possible objections for it.

Firstly, one may think that my conception of temporariness is over-simplified. It might be supposed that transnational membership of Mexican temporary workers in the U.S. is different from that of Filipino caregivers in Hong Kong. Even within the category of Mexican workers in the U.S., their enjoyment of membership varies depending on their occupations, skills, and sense of political belonging. At the same time, the degree of policy commitment by sending and receiving countries varies depending on the numbers of expatriates, economic significance, and historical connections with receiving states. For Mexico, the protection of their expatriates in the U.S. is more important than that in Japan. Moreover, from the perspective of the U.S., Mexican and Filipino workers, they may have

different demands and claims, not only as individuals, but also as a group. Therefore, my conceptions may seem unable to take these differences into account.

Secondly, my conception of temporariness might be found over-inclusive. My definition of temporariness includes many sub-categories of temporary migrants such as tourists, international students, lower and higher skilled workers, trainees, asylum-seekers, and refugees. It is legitimate to aver to their different life prospects and living conditions. For instance, the primary interests of international students would be not to earn and save money but to have a good education for their future career. Lower-skilled migrant workers may wish to return after saving enough money to sustain the lives of their family left behind. Asylum seekers and refugees may demand permanence in order to escape from their suffering and persecution. Moreover, the diagnosis of the injustice which a specific category of temporary migrants suffers is of particular importance. Therefore, my conception may seem to exclude the various causes of injustice in the context of temporary migration, such as class, gender, race, nationality, and age.

Thirdly and lastly, one may reject the possibility of grouping temporary migrants given the above diverse and heterogeneous characteristics. Indeed, temporary migrants hardly identify themselves as temporary migrants beyond what Iris Marion Young (2002, 6) called the "passbook" meaning of identity, which means just "an acknowledgement of power of the rules over my life because of my lineage or bureaucratic status." As Linda Bosniak (2006, 10) argues, non-citizens are different from each other in legal status and in other social divisions, such as gender, ethnicity, race, and class, "that affect noncitizens' experiences in ways that frequently compound, and frequently ameliorate, the disadvantage associated with alienage status." Bosniak (2006, 10) carefully cautions that "it is often not very meaningful to talk about aliens as a unitary class." This caution is also relevant in the case of temporariness because while Bosniak's (2006) conception of "alienage" refers only to the legal status of non-citizens in a receiving country, my conception of temporariness looks at the effect of the sending country at the same time.

These objections point to the logical and political difficulties inherent in the attempt at grouping temporary migrants: it may subsume the possible and diverse political relationship which various temporary migrants enjoy. To escape this difficulty, one might 'multiply' temporariness by inductively specifying the contexts of temporariness. For instance, we may diagnose the injustice that Filipino female temporary caregivers suffer in Canada by grouping them as a specific sub-category so that we may be able to escape

from the criticism of over-simplification and over-inclusion. We may further specify how the class and gender structures work in structuring 'their' temporariness. Therefore, an appropriate way of grouping might be, for instance, 'Mexican male construction workers in the U.S.,' 'Chinese students in the UK,' "Filipino female caregivers in Canada,' each of which exposes specific characteristics of temporariness.

While such hyphenated-temporariness has significant advantages, especially for empirical studies, it also has some disadvantages. Firstly, it inevitably subsumes the structural feature of temporariness under the different axis of injustice, such as class, gender, race, nationality, and so on. Indeed, the experiences of Filipino caregivers in Canada cannot be understood by taking into account the legal status attributed to them only. Instead, we would have to find how the class, gender, and nationality relations work in this specific category. While this would be helpful for understanding the complexity of injustices that temporary migrants face, it leads us to see the problem of temporariness through the other modes of social differentiation. As a result, it may dismiss the axial roles that temporariness plays in structuring the social conditions of migrants.

Secondly, it is unclear whether the categorisation of 'Filipino caregivers in Canada' can escape the dilemma of categorisation. This category refers to three elements, the country of origin, the working sector, and the country of residence. This does not specify their ethnic and cultural differences, prior educations, career plans, work conditions, and so on. While this categorisation is more specified than mine, it still presupposes the unity and stability within it while neglecting the possible variations. We may be able to further multiply temporariness. Yet, even if we add further variables to temporariness, this strategy cannot answer the question of why temporariness matters, because it inductively conceptualises temporariness through the different lenses of injustice. What they can explain is gendered, class-based, racial, nationality-based temporariness but not temporariness as such.

One possible reaction to the difficulties of grouping temporary migrants would be to abandon this concept itself and focus on other social divisions to differentiate the category of migrants. That is, we may put the problem of temporariness aside and instead concentrate on the class, race, and gender, nationality relationship as a core cause of injustice in the context of temporary migration.

Nonetheless, it is also clear that temporariness structurally shapes the lives of migrants. The structural divisions between temporariness and permanence cannot be reduced to

the other modes of social differentiation. As a category, temporary migrants hold a plural but not full political membership in two states. Their divided membership renders them politically vulnerable. This differentiation does not always match the other axis of injustice. While they are gradually enfranchised for home state politics, it is still unclear how and to what extent sending countries can represent their interests through the 'governmentalised' emigrant policies described in the sixth section of this chapter.

The core feature of temporary migration is not the plurality or diversity of identity, class, gender, race, or the sense of political belonging, but the plurality of jurisdictional-political relationships. The problem of temporariness defined as such is not reducible to the other lenses of injustice. Instead, the jurisdictional problem should be the starting point since their claims of freedom and equality *qua* temporary migrants cannot be protected without settling the structure of responsibility assigned to the states.

Still, it is legitimate to ask the structural feature of such category. Do they constitute a group? What attributes do they share? Taking Jean-Paul Sartre's conception of seriality as her springboard, Iris Marion Young (1994) provides a fruitful way of thinking about understanding a social collective without requiring the positing of common attributes or a common situation. Following her conception of seriality, I understand temporary migrants as a series, not as a group. For Young (1994, 723), a group is defined as "a collection of persons who recognize themselves and one another as in a unified relation with one another [...] Members of the group, that is, are united by action that they undertake together." In this sense, temporary migrants do not constitute a group, since there is no "collective project" as such based on "self-consciously, mutually acknowledging collective with a self-conscious purpose" (Young 1994, 724).

In contrast, "a series" refers to "a social collective whose members are unified passively by the objects around which their actions are oriented or by the objectified results of the material effects of the actions of the others" (Young 1994, 723). In this sense, a series lacks mutual identification, which is typical of a group. However, importantly, members of a series are aware of "the serialized context of that activity in a social collective whose structure constitutes them within certain limits and constraint" (Young 1994, 725). Temporary migrants as a series do not share any set of common attributes nor identity but are positioned within certain limits and constraints, i.e. a plural, incomplete and changing jurisdictional relationship with states. This structural condition, which Sartre called "practico-inert realities," reproduces the milieu of actions, namely, the constraints

and enablement of actions taken by a series. In Marxist terms, temporary migrants are not a 'class-for-itself' but a 'class-in-itself.'

What are the structural conditions that construct temporariness? The structure of temporariness is usually enforced by the binary division between sedentariness and temporariness. The meanings, rules, and practices of institutionalised temporariness constitute temporary migrants in the relation of the potential appropriation by sedentary citizens in their countries of origin and residence. To be fair, this binary structure between citizens and non-citizens is only one of the complex structures of other objects and historical processes that condition migrants' experiences as temporary. The cultural codes of majority citizens do not treat temporary migrants as long-standing members of a polity. The stratified economic systems categorise unskilled migrant workers as 'undesirable' for sedentariness. The growing, contemporary 'security logic' pushes the government to monitor the way of life of temporary migrants jealously and emphasises their non-belonging. At the same time, familial and ethnic ties to their community of origins condition the actions of temporary migrants in the long run. Temporary migrants constitute a series that cuts through the international system of states, which, practically and ideologically, presupposes the homogeneous sedentary citizenry. Yet, being positioned as temporary does not designate the standard set of attributes and identity which attach to a person in the same series of temporariness. Temporary migrants constitute a serial collective defined by a set of structural constraints and relations that condition their actions and meanings.

2.4 TEMPORARINESS AND VULNERABILITY

What challenges does temporary migration pose? In this section, I argue that intentional and jurisdictional temporariness raises two different but interrelated problems of vulnerability to domination. Jurisdictional temporariness makes migrants more vulnerable to political domination, while intentional temporariness makes migrants more vulnerable to societal domination. The challenge of temporariness cannot be resolved by looking at one side only.

2.4.1 Jurisdictional temporariness and rights vulnerability

Jurisdictionally temporary individuals are those who are permitted to stay in a country for a definite period. While jurisdictional temporariness is primarily about the rights of residence, it has a significant impact on the other areas of rights as well.

As Lydia Morris observes, "the rights and protections afforded by the state to different 'entry' categories constitute a system of stratified rights closely associated with monitoring and control"(Morris 2002, 84). According to conventional wisdom, the degree of rights and obligations attributed to migrants should grow over time. In his article on temporary migrants, Joseph Carens (2008) underlines the moral importance of the passage of time: "the longer the stay, the stronger the claim to full membership in society and to the enjoyment of the same rights as citizens, including, eventually, citizenship itself" (Carens 2008, 419). If we accept this principle, as Carens himself notes, it implies the converse principle that "the shorter one's stay, the weaker one's claim to remain" (Carens 2008, 422). As temporary migrants are expected to stay for a short period, their rights are significantly limited compared to permanent residents and citizens.

At this point, let us recall the distinction between human rights and membership rights. By human rights, I mean the rights based on universal personhood enshrined not only in international human rights treaties but also in the constitutional principles of liberal democratic states, such as the right to a fair trial, freedom of conscience and speech, freedom from slavery and torture, and so on. While these human rights are threatened in the age of terror and security, everyone should enjoy these rights regardless of their residential status. No liberal democratic state can deny expanding these rights to everyone at least inside their territory. However, it becomes much more complicated to argue that we should expand membership rights to everyone within the jurisdiction. By membership rights, I refer to the rights typically attached with permanent residency and citizenship, such as the right to vote and run for office, the right to family reunification, the right to free choice of employment, social rights to non-contributory benefits, and the unconditional right to enter and remain inside the territory. These rights are limited to jurisdictionally temporary migrants. One may argue that these restrictions of rights might be trivial if temporary migrants are given a safe path to permanent residency and citizenship. This may be true. However, for many temporary migrants, especially irregular migrants and foreign workers admitted through governmental programmes, such options are hard to obtain due to the visa restriction or their intentional temporariness. Because

they are admitted as temporary and not as members, the receiving states enjoy relatively wide ranges of discretion over not only their right of residence but also membership-related rights. Even if the state takes an arbitrary decision from a perspective of migrants, there are few official mechanisms to contest or authorise their decision.

Temporary migrants are, by their nature, vulnerable to the governmental decision taken by the host states. Their condition of rights is not so different from what Michael Walzer (1983) describes -referring to the experience of German guestworker programmes- as "tyranny":

> These guests experience the state as a pervasive and frightening power that shapes their lives and regulates their every move – and never asks for their opinion. Departure is only a formal option; deportation, a continuous practical threat. As a group, they constitute a disenfranchised class. They are typically an exploited or oppressed class as well, and they are exploited or oppressed at least in part because they are disenfranchised, incapable of organizing effectively for self-defense. Their material condition is unlikely to be improved except by altering their political status. Indeed, the purpose of their status is to prevent them from improving their condition; for if they could do that, they would soon be like domestic workers, unwilling to take on hard and degrading work or accept low rates of pay (Walzer 1983, 53).

While this description focuses on migrants' relationship with the host states, we should understand their rights vulnerability also in relation to the sending states. At least potentially, their rights vulnerabilities can be mitigated by the policy commitments by sending states. Consider the example of tourists. Tourists enjoy few rights related to the membership of the country they visit. However, we do not usually describe them as vulnerable. This is mainly because most membership rights are not directly related to their purpose. If tourists can enjoy their membership when they return to the sending country, this is sufficient. What sending countries should provide them with is diplomatic protection and a secure and smoother way of travelling, including visa-waiver agreements with host states. Analogically, if sending countries can protect external citizens and provide sufficient social services to them, we may argue that there would be no morally pressing problem regarding their rights vulnerability. Moreover, growing numbers of countries implemented external voting rights for their expatriates. Several countries reserve special seats in the national parliament for their external citizens

abroad.[3] These external protection policies by sending countries are of importance because they may mitigate the vulnerability of temporary migrants.

Therefore, jurisdictional temporariness raises the issue of rights vulnerability of migrants. This vulnerability should be understood in relation to not only receiving country but also sending countries.

2.4.2 Intentional temporariness and social vulnerability

While the problem of jurisdictional temporariness seems obvious, the problem of intentional temporariness is not so clear-cut. Is there any problem with people who are mentally mobile?

Ottonelli and Torresi (2012) illustrate how intentional temporariness or "temporary migration projects" can make migrants vulnerable. I contend that their focus on the intentional side of temporariness is a welcome contribution to the migration scholarship. Many scholarly efforts have so far focused on the consequence of post-war labour recruitment policies, most notably the U.S. Bracero programmes and German guest-worker programmes. These programmes are considered a failure, as they could not manage the flow and number of migrants and generated many "unintended consequences" including the permanent settlement of guests, family reunification, urban segregation and social exclusion (Massey and Pren 2012; James Frank Hollifield, Martin, and Orrenius 2014). The aphorism "there is nothing more permanent than temporary foreign workers"(Martin 2003) has been a familiar dictum summarising the previous guest-worker programmes. The underlying belief here is that migrants seem willing to become permanent residents or citizens. However, this diagnosis should be qualified. As Ottonelli and Torresi (2012) argue, many, if not most, temporary migrants wish to stay *temporarily* as a part of their life-plans.

Statistically speaking, not many people can or are willing to become permanent. One classic study estimated that "more than two-thirds of the foreign workers admitted to the Federal Republic [of Germany], and more than four-fifths in the case of Switzerland, have returned"(Böhning 1984, 147, cited in Dustmann and Weiss 2007, 239). In the UK, Christian Dustman and Yoram Weiss estimate that about forty per cent of all males and

[3] These countries include Algeria, Angola, Cape Verde, Colombia, Croatia, Dominican Republic, Ecuador, France, Italy, Macedonia, Mozambique, Portugal, and Tunisia (IDEA 2007, 28).

fifty-five per cent of all females who have stayed at least for one year have left within five years (Dustmann and Weiss 2007, 253). According to a recent survey, twenty to fifty per cent of immigrants (who have stayed in the host country at least for one year) leave within five years after their arrival, either to return home or to migrate to a third country (OECD 2008, 163). While these estimates do not take into account those who stay less than one year, such as tourists, seasonal and contract workers, and undocumented migrants, many or even the majority of international migration are temporary rather than permanent. As Russel King memorably put it, while "the historiography of migration studies has nearly always tended to imply that migration was a one-way process, with no return," "[r]eturn migration is the great unwritten chapter in the history of migration" (King 2000, 7).

Ottonelli and Torresi (2012, 209-210) offer a phenomenological profile of temporary migration. Firstly, temporary migrants' behaviour in the labour market is different from permanent residents or citizens. Since many of them migrate with an economic motive, they tend to work for more extended hours and even accept lower earnings and working conditions. Secondly, their housing condition is dramatically below local standards. This is partly explained by their strategy of maximising savings. Thirdly, and most importantly, they tend to be unwilling to engage in the civic, political and social life of the host society. Since they intend to stay for a limited period only, they usually locate their social basis of self-respect in their country of origin.

As a result, intentionally temporary migrants find themselves into a condition of vulnerability. Firstly, temporary migrants are frequently exposed to potential losses because of the failure of their projects. Secondly, especially for lower-skilled migrants, engaging in temporary migration projects involves a lesser or marginal status in the receiving country. For Ottonelli and Torresi (2012), it is this marginal and subaltern feature that makes temporary migrants vulnerable. What is especially challenging is that such project is semi-voluntarily chosen by migrants:

> "The temporary nature of these migration projects makes it psychologically and socially possible to accept low-status jobs and a life of sacrifice which would never be considered acceptable at home or within the context of a permanent migration project. In addition, these migrants do not invest in the social and political networks that are an essential precondition for the effective enjoyment of the legal protections provided to local workers" (Ottonelli and Torresi 2012, 211).

For Ottonelli and Torresi (2012), this feature is particularly troubling for mainstream political theorists who have advocated fairly open borders with smooth access to citizenship as the solution for temporariness. As I see it, their message can be interpreted as claiming that a solution for jurisdictional temporariness is not necessarily a solution for intentional temporariness. From a jurisdictional perspective, the simplest way to reduce the vulnerability of migrants is to provide them with an unconditional right of movement accompanied by the enhanced protections of other rights, idealising unregulated temporariness for everyone, which should be the characteristic of a world of open borders.

However, this ideal can be ineffective in preventing the vulnerability of intentional temporariness. To be fair, if the world were to become more economically equal, intentional and unregulated temporariness would not be a severe source of vulnerability. However, if we adopt the presupposition that the world remains highly unequal, intentional temporariness becomes a much more serious concern for liberals. If we allow temporary migrants pursue their plans, this leads us to accept their de facto and de jure unequal status in the country of residence. However, this acceptance means a significant deviation from the fundamental value of liberal egalitarianism. Conversely, if we attempt to establish status equality for temporary migrants, this would neglect their life plans. Since they usually locate their social basis of self-respect in the country of origin, the liberal ideal is unworkable. For Ottonelli and Torresi, what is needed is not jurisdictional permanence and free movement, but the policies of accommodating temporary migration projects and their specific needs by giving them a special set of rights (Ottonelli and Torresi 2012; 2014).

Now we are ready to synthesise the challenge of temporary migration. Temporariness is morally relevant because it makes migrants vulnerable to either political and/or societal domination. Their vulnerability cannot be reduced only by taking either receiving or sending countries into account.

2.5 A NEW AGENDA FOR TEMPORARY MIGRATION: A TRIPLE-WIN?

The challenge of temporary migration should be read in the context of the recent re-discovery of temporary migration. While temporary migration is nothing new, our view about it is taking a new turn. Policymakers and scholars alike have heralded temporary

or circular migration as an innovative policy option to create a "triple-win" situation, offering benefits to temporary migrants, countries of residence and origin. What rationales are behind this turn to temporariness? What benefits are supposed to be distributed among the three parties? Is a triple-win really a new idea or merely a fashionable label for masking unfairness? These questions will be answered in this section. I argue that the rationales behind the turn to temporariness are morally relevant and too significant to be ignored. The emphasis on ensuring fair benefits between three parties is essential; however, its achievement is easier said than done.

What rationales are behind the turn to temporariness in immigration research and policy-making? Schematically, we can identify three main rationales, which are closely interlinked: the demands for greater labour mobility across poor and rich regions will continue to grow under the globalised economy; the ideas and sentiments against admitting unskilled workers on a permanent basis are especially pertinent to the citizens of developed countries and are unlikely to change; there is a growing need to distribute a fair share of benefits among each party by regulating, rather than deregulating, labour mobility.

In his provocative piece, Lant Pritchett (2006) advocated greater temporary mobility of unskilled labour between rich and poor world regions. With a great attention to empirical detail and prudence, he displays the cross-border mobility of unskilled labour as a phenomenon stuck between "irresistible forces" in the global economy and "immovable ideas" which suppress the development potential of labour mobility.

Pritchett (2006) underlines the five forces for greater labour mobility across borders, which have been growing and will continue to grow: (1) wage gaps across countries; (2) regional gaps in the supplies of young workers; (3) the reduction of costs and acceptance of the idea of mobility through globalisation; (4) growing deficits of low-skill, hardcore nontradable service jobs in developed countries; (5) the economic divergence of regional optimal populations. These forces are identified as "irresistible" as the main impetus lies in demographic and economic logics and is not directly related to the political (Pritchett 2006, chap. 2).

It is important to note that these irresistible forces come not only from outside but also from inside wealthy states. Population aging and shrinking due to rising life expectancy and declining fertility rates is a widespread concern for developed countries. Rural depopulation and urban congestion lead to diversified deficits of labour, which is not

readily supplied by the domestic market. Under such conditions, preventing local employers from hiring foreign workers would distort the local economy. At the same time, the vast and growing global inequality between states undeniably pushes migrants to find a job to sustain and enhance their life prospects. From a purely economic or demographic perspective, the demand for greater labour mobility both for natives and migrants is strong.

However, according to Pritchett (2006), such a demand for labour mobility is opposed by the resilience of "immovable ideas," which mean the anti-immigration sentiments of a large part of citizens in more affluent countries. Policymakers should be accountable to their citizens concerning how the admission of unskilled migrant workers would impact on public services, possible security risks, average wages, low-income workers, and potential cultural change. It is fair to say that perfect labour mobility across borders is politically unfeasible simply because enlightened elites and politicians cannot gain public support for the agenda of open borders especially when refugees and newcomers are portrayed as a security threat.

Wedged in-between the opposing forces and ideas, the rationale for *temporary* migration comes to the fore. As Martin Ruhs and Philip Martin (2008, 20) argue, government officials often find temporary admission of foreign workers "the best compromise between the extremes of no borders and no migrants." On the one hand, receiving countries may escape public opposition by selectively admitting migrant workers while preventing their permanent settlement. The related rationale is to disincentivise (prospective) irregular migration by offering them an easy and official path to work in the state territory. It is important to note that most scholars propose temporary migration programmes of regulated, rather than spontaneous or unregulated, labour mobility strictly checked by government(s).

While such a regulated temporariness is at odds with the liberal or libertarian ideal of open borders, there are some reasons why this proposal can be attractive for migrants and their countries of origin. The development potential of temporary or/and circular migration has recently received much scholarly attention (Agunias and Newland 2007; van Houte and Davids 2008; Barker 2010). One of the critical issues is the development impact of remittances, which is a core rationale both for migrants and their countries of origin. The World Bank projected that the remittance flows to developing countries would

rise to USD435 billion in 2015.[4] This amount is nearly three times as large as the size of official development assistance. While there is scant evidence about how much remittances have contributed to the socio-economic development of the countries of origin, it is true that remittances can play an essential role in improving the life-prospects of migrants and their families. In the case of the Pacific Seasonal Worker Pilot Scheme in Australia, for instance, Tongan participants earned, on average, five times more than in their previous job for a comparable period, and their remittance increased by 39 per cent of their household income in Tonga (Ruhs 2013, 125). Therefore, there is a good reason for migrants and sending countries to favour more open admission policies. This is especially the case for lower-skilled workers because the potential costs of 'brain drain' is not so significant compared to those for highly skilled migrants such as doctors. Moreover, by facilitating their return, sending countries may benefit from 'brain gain.'

We are now ready to understand why temporary or circular migration is proposed to create a "triple-win" situation. Dovelyn R. Agunias and Kathleen Newland (2007) portray the vision as follows:

> It offers destination countries a steady supply of needed workers in both skilled and unskilled occupations, without the requirements of long-term integration. Countries of origin can benefit from the inflow of remittances while migrants are abroad and skills upon return. The migrants are also thought to gain much, as the expansion of circular migration programs increases the opportunities for safer, legal migration from the developing world (Aguinas and Newland 2007, 1).

This vision might be attractive but needs to be unpacked. As Piyasiri Wickramasekara (2011, 21) cautions, the proposed distribution of benefits is a result of temporary migration programmes "at their best." There might be other forms which do not lead to this triple-win scenario. Indeed, one feature of the triple-win proposal is that there is no common denominator for coherently assessing the balance between three different benefits. Therefore, there is a good reason for not taking the ideal of triple-win for granted. The interests held by each actor involved are qualitatively different. Because there is no common denominator for comparing these interests, one may conclude that there can be a triple win even when one party gains much less than the others. The crucial question

[4]http://pubdocs.worldbank.org/pubdocs/publicdoc/2015/10/102761445353157305/MigrationandDevelopmentBrief25.pdf (accessed March 12, 2016)

which needs be answered is how we can construct a principle for ensuring the fair distribution of benefits between three parties while mitigating the potential risks. However, the emphasis on ensuring the proper distribution of benefits between the three parties is indeed new and morally relevant.

2.6 GOVERNMENTALISATION OF TEMPORARINESS?

In this section, I highlight how sending and receiving countries have responded to the challenge of temporariness in our age. I argue that there is a parallel development of *governmentalisation of temporariness* in both sending and receiving countries. Not only immigration policies but also emigration policies are increasingly 'governmentalised,' and accordingly, the lives of temporary migrants are increasingly 'governed' in-between two states.

The governmental control over temporariness in the early post-war periods can be characterised as a complete asymmetry. On the regulation of temporariness, the receiving countries held a 'free-hand' while the sending countries adopted a 'laissez-faire' policy. In other words, receiving states enjoyed the right of non-interference within their jurisdiction including the rights and obligations of non-citizens, and at the same time, sending states baulked at interfering with extraterritorial decisions taken over their expatriates. However, I argue that this constellation of power has changed into the different configuration of inter-governmentalisation under which the protection of rights and obligations of temporary migrants is governed in-between sending and receiving states.

The right to control borders has long been considered as a state prerogative. In an absolutist reading, the right to control borders is the core of state sovereignty. In the migration scholarship, temporary migration has been a critical topic to assess the reality of state sovereignty. In his seminal comparative work on nationhood and citizenship law in France and Germany, Rogers Brubaker (1992) argued for the resilience of national sovereignty in matters of immigration and citizenship control. The contrast between German "ethnic" and French "civic" models of citizenship has been the cornerstone of the study of citizenship and immigration (Brubaker 1992). Yasemin Soysal (1994) and Christian Joppke (1999) counter Brubaker's dichotomous understanding and offer a more nuanced picture. For Soysal (1994), national sovereignty is no longer absolute, and now

the rights of non-citizens are invested in universal "personhood," which heralds the birth of the "postnational model of membership." Importantly, this story derives from the case of European guest-workers who became permanent residents and eventually, citizens. As she memorably put it, "the recent guestworker experience reflects a time when national citizenship is losing ground to a universal model of membership anchored in deterritorialized notions of persons' rights" (Soysal 1994, 3). While Joppke (1999) is sceptical about the strength of the "international human rights regime" and underlines rather the importance of the constitutional and legal restraints of "self-limited sovereignty," there is a growing consensus among scholars that now the state prerogative over immigration and naturalisation is not unlimited but constrained by internal and external norms (For the best synthesis, see Joppke 2010).

These explanations of changes in immigration and citizenship policies are deduced from the history of post-war temporary migration. In Europe and the United States, many scholars have struggled with the problem of "unintended consequences" of post-war temporary migration (Hollifield, Martin, and Orrenius 2014; Lahav and Guiraudon 2006). With the infamous U.S. Bracero Program and German guest worker programmes at the head of the list, post-war international migration yielded a large stock of long-term or permanent non-citizens. As these migrants had not returned, and even employers asked for them to stay and to re-unify their families, intentionally temporary migrants turned into intentionally permanent residents. Accordingly, many liberal democratic states eventually opened their way to the liberalisation of permanent residence and eventually, citizenship. Since many immigrants seemingly wished to stay longer, it is no wonder that scholars and activists alike pushed for a more inclusive approach to immigration by giving them a secure residential status. In a sense, many scholars have engaged with the consequences of temporary migration but not temporary migration as such. It is important to note that most naturalised citizens and permanent residents were initially admitted as temporary migrants.[5] These represent only a part of the migrant population who had crossed their borders and left voluntarily or involuntarily. While the social integration of naturalised citizens and their descendants is still a pressing problem, I

[5] In North-America and Oceania, permanent immigrants are either admitted as such to the territory or can transform their status from temporary to permanent when already residing in the country. The tendency is that more and more permanent immigrants have been initially admitted with temporary statuses.

believe that other scholarly effort should be directed at understanding temporary migration as such.

In the aftermath of liberalisation of citizenship for long-term immigrants, we can find the parallel development of new governance of temporariness. Many developed countries have implemented renewed temporary migration programmes. Canada has recently started recruiting migrant live-in-caregivers and seasonal workers, and the number of temporary migrants has so far increased substantially. The U.S. introduced new legislation to the Senate in 2013, proposing the creation of a new scheme of large-scale recruitment of unskilled migrant workers. In Europe, where Stephen Castles once wrote the "obituary" (Castles 1986) notice for guest worker programmes, we experience its "resurrection"(Castles 2006). Jean-Pierre Cassarino (2013) highlights the "drive for securitized temporariness" in EU member states to respond to the problem of "flexicurity" in the post-industrial world. We can discern similar but stricter trends outside of the West, including the Arabic Gulf States and East-Asian countries. As Nicola Piper (2010, 110) rightly summarises, "the (re-)emergence of temporary and seasonal migration can arguably be described as a converging policy of almost global outreach."

Joppke (2011) diagnoses the current trends of western migration policies in terms of states attempting to "stem" 'unwanted' immigrants temporarily but, at the same time, "soliciting" 'wanted' immigrants permanently. Developed states jealously guard access to rights and citizenship for the former while laying out the 'red carpets' for the latter. Similarly, Ayelet Shachar and Ran Hirschl (2014, 236) eloquently observe this selectively stratified drive for temporariness:

> "Debates about migration and globalization can no longer exclusively revolve around the dichotomy between open versus closed borders. Countries simultaneously engage in both opening and closing their borders, but they do so selectively—by indicating quite sharply who they desire to bring in (namely, those with specialized skills and talent, or, as we shall later see, deep pockets) and erecting higher and higher legal walls to block out those deemed 'unwanted' or 'too different.'"

There is a growing normative and practical consensus that if temporary migrants become permanent, it is difficult for receiving states to reject their access to rights and citizenship. Yet, this consensus is also a double-edged sword: if temporary migrants really leave after a certain period, there is no need to offer them a path to permanence and citizenship.

Many immigrant-receiving countries, therefore, attempt to make temporary migration strictly temporary. In other words, they attempt to close the possibility of change by encouraging and forcing them to return.

Although governmental control of temporariness is not a new phenomenon for receiving countries, the novelty lies in their relation to sending countries. While the receiving states play a crucial role in structuring temporariness, this is still a partial picture since it does not account for the *emigration* side of temporariness. To be fair, sending countries do not have a direct power to govern their external citizens. However, it is also wrong to underestimate the governmentalisation of diaspora policies and its implication for the structure of temporariness.

For a long while, less scholarly attention has been paid to the emigration side of temporariness. One reason is that sending countries have had scarce resources to intervene or govern the rights and obligations of their external citizens merely because they are abroad. However, thanks to the developments in information technology and management tactics, such inability is no longer a correct diagnosis. Indeed, diaspora and emigrant policies have gained growing attention for the development agenda. Existing studies underline the development potential of remittance and 'brain circulation' and highlight how migrants' agency is embedded and associated with their country of origin.

The contribution by Alan Gamlen (2006; 2014) on "diaspora engagement policies" is of particular importance. According to Gamlen (2006), emigration states have increasingly engaged in "capacity building policies," which are designed to create a transnational "relationship of communication" with their expatriates. The objectives of these policies include: "discursively producing a state-centric 'diaspora' and developing a set of corresponding state institutions to govern the diaspora; extending rights to the diaspora, thus playing a role that befits a legitimate sovereign; extracting obligations from the diaspora, based on the premise that emigrants owe loyalty to their legitimate sovereign (Gamlen 2006, 22). As Gamlen concludes, "[d]iaspora governance is becoming governmental" (Gamlen 2014, 204). By launching various diaspora engagement policies, the states of origin actively commit to governing their external citizens. The growing introduction of external voting rights is the prime example of such governmentality in the twenty-first century. These roles played by sending states in structuring temporariness should be underlined. By reaching a bilateral or multilateral agreement, launching return

migration programmes, transferring social welfare, sending states not only manifest their expectations but also 'govern' their temporary expatriates abroad.

We should be cautious not to over-generalise patterns of emigration policies. Compared to immigration policies that directly involve hard and centralised rules of control, diaspora policies are generally softer and less coordinated. As David Fitzgerald argues, for example, emigration policies are "best understood by a 'neopluralist' approach disaggregating 'the state' into a multilevel organisation of distinct component units in which state incumbents and other political actors compete for their interests" (Fitzgerald 2006; quoted in Zapata-Barrero et al. 2014, 9). As Boccagni, Lafleur, and Levitt observe, the stance taken by sending states varies depending on their history of emigration. They distinguish three types of emigration states, Transnational Nation States (treating all emigrants as long-term, long-distance members), Strategic and Selective States (encouraging some forms of long-distance economic and political nationalism but in a selectively and strategic way), and Disinterested and Denouncing States (treating migrants as if they no longer belong to their homeland) (Boccagni, Lafleur, and Levitt 2015, 3-4). Although immigration inevitably requires receiving states to take jurisdictional recognition of the existence of temporary migrants, it is unclear whether emigration involves the same pressing recognition of emigrants for sending states.

Yet, the growing importance of emigration policy matters for two reasons. Firstly, as a matter of fact, emigration policy is a highly relevant issue for *some* temporary migrants. Filipino temporary workers in the U.S. have relatively better access to homeland welfare and social provision than Indonesian temporary workers in the U.S.. This disparity in external protection is vital if we understand the enjoyment of membership both in sending and receiving countries. Moreover, this disparity raises a general theoretical question – to what extent should sending states protect their external citizens – which is analogous to the question as to the extent to which receiving states ought to protect their internal non-citizens. Secondly, while not unitary and coordinated, we should not underestimate the potential of governmental power exercised by the country of emigration. The crucial fact is that, now, many sending states can exercise their governmental power beyond their jurisdiction in ways that were not attainable before the current period of globalisation. This power can be used for both desirable and undesirable institutional outcomes. In a desirable scenario, sending states may enhance the overall protection of their expatriates by providing them with various social and political

resources. In an undesirable scenario, sending states may further dominate their expatriates by arbitrarily governing and exploiting them through imposing tax burdens and penalty fees for non-return.

What has so far been established is that the lives of temporary migrants are increasingly 'governed' in-between their countries of residence and origin. This inter-governmentalisation of temporariness raises the difficult question of migrants' democratic agency. One of the core values of democracy is political equality, which is institutionalised through formal procedures of electoral representation, equal liberties and opportunities for informal civil society engagements and the equal enjoyment of basic rights. But, from which authority do temporary migrants claim their enjoyment of political equality? Alternatively, which authority should bear the responsibility for securing their enjoyment of political equality? This problem becomes evident if we take into account the conflicting interests of political authorities over temporariness. It is crucial to recognise temporary migrants as immigrants and emigrants at the same time. As immigrants, they share certain characteristics with sedentary citizens. As emigrants, they may keep their sense of belonging and sometimes raise claims directed towards their homeland. They construct their social basis of autonomy in-between states. Some may return, some may settle. This places them in the intermediate category between sedentary citizens in their homeland and in their country of residence.

2.7 CONCLUSION

It is this historical process that forms the backdrop to my theoretical endeavour. If the rights and obligations of temporary migrants are increasingly governed in-between their country of residence and origin, what responsibility should each state bear towards temporary citizens within and beyond their jurisdictions? Alternatively, from the perspective of temporary migrants, can they become not merely temporary migrants but also temporary citizens, who enjoy equal citizenship as such? Might our commitments to democracy lead us to endorse a radical conception of migrant citizenship, through which migrants' interests and perspectives in-between their country of residence and origin are also represented in the democratic institutions of both countries?

The challenge of temporary migration refers to the theoretical and practical problems of accommodating the differences and needs arising from this hybrid pattern of political

agency in a feasible and morally defensible way. What remains unseen is how temporary migrants can enjoy equal citizenship in a context of governmentalisation of temporariness, which has so far conditioned but isolated the lives of temporary migrants from the sphere of democratic responsibility. To provide a theoretical justification for such a future is the aim of the following chapters.

Chapter 3: The Myth of Sedentariness

INTRODUCTION

This chapter reviews how and on what grounds scholars argue for and against temporary migration. As I argued in Chapter 2, many countries have recently rediscovered temporary migration as a means for achieving various social goals. At its best, it is expected to produce a 'triple-win,' bringing benefits to temporary migrants, and countries of residence and origin, respectively. While there is much evidence and prudential reasons for not exaggerating its benefits, the emphasis on the balance between three parties is morally relevant.

Although realistic scholars have proposed improving temporary migration programmes pragmatically, a response from normative theory has yet to be delivered. Normative scholars have been silent on temporary migration because temporary migration cuts across the 'open' versus 'discretionary' borders division in the ethics of the migration debate. My central claim is that if normative theorists really want to contribute to our understanding of temporary migration and how it can be ordered, we should go beyond the pragmatic retreat by resurrecting a new democratic ideal of temporary migration. The issue at stake, it is argued, is not the empirical benefits or otherwise of the so-called 'triple-win' conception, but whether it is capable of delivering a normatively robust democratic ideal for people whose political membership is divided between two or more states.

In the first section, I distinguish two approaches to the ethics of migration, realistic and idealistic, and explain how both approaches interrelate. In the second section, I review the idealistic theories of temporary migration. As I see it, idealists presuppose that temporary migration is a non-ideal pattern of human mobility, involving inevitably the problems of exclusion, exploitation, and/or domination. I argue that while idealists identify the various injustices of temporary migration, their arguments are not well equipped to address them. To put it simply, idealists argue that we should abolish temporary migration programmes so that we might act with 'clean-hands'. In the third section, I review realist arguments for improving and expanding temporary migration programmes under the constraint of feasibility. While I have sympathy for their proposals, their

arguments are *ad-hoc* and overly contextual. In the fourth section, I will argue that by framing the issue in terms of a democratic ideal, the gap between idealistic and realistic approaches in the ethics of temporary migration may be overcome.

3.1 THE ETHICS OF MIGRATION: REALISTIC AND IDEALISTIC APPROACHES

While normative scholars have traditionally paid "scant" attention to the international movement of people (Benhabib 2004, xiii), in recent years the "ethics of migration" has emerged as a field of study (Bader 2005; Seglow 2005; Fine 2013; Carens 2013). In this section, I will argue how international migration may be framed in a normative perspective. I will distinguish "realistic" and "idealistic" approaches, and drawing on the work of Joseph Carens (1996), will underline the importance of an integrated approach.

In an influential article, Carens (1996) distinguishes "realistic" and "idealistic" approaches to the ethics of migration. The realistic approach, Carens argues, aims at guiding action in the real world and emphasises the importance of minimising the gap between *ought* and *can*. The idealistic approach, in contrast, is concerned with the issue of justification providing an account of 'what ought to be' under idealised circumstances with little attention given to existing realities and its feasibility.

According to Carens (1996), both realistic and idealistic approaches have their strengths and weaknesses. One of the strengths of the idealistic approach is that it "avoids legitimating policies and practices that are morally wrong and gives the fullest scope to our critical capacities" (Carens 1996, 167). For example, in the age of slavery, the abolition of slavery seemed unrealistic and unfeasible. The idealistic approach offers arguments which are relatively free from concerns of feasibility. The relevant question, instead, is whether slavery is unjust. Therefore, it can proffer a moral judgment independent of actual social practices. However, because of its abstraction, the idealistic approach may be less useful for guiding our actions. Moreover, by asking what justice requires, we may lose sight of some critical real-world issues. The prime example is the problem of refugees. In a hypothetical just world, the problem of refugees would not exist because the kind of injustice that produces refugees would be absent *ex hypothesi*. If no refugees exist in the ideal world, the idealistic approach cannot provide a constructive way to deal with the problem of refugees, even though the existence of injustice can be identified.

The realistic approach may help to avoid this weakness of the idealistic approach. Firstly, it focuses on the knowledge and cognitive biases embedded in the real world. Secondly, based on this practical knowledge, it submits feasible and concrete principles for guiding our action. It observes the causes and structure of the real problem and attempts to reduce injustice within the limit of feasibility. However, at the same time, this approach risks legitimising unjust practices because it draws on ordinary ways of thinking about normative principle. Carens (1996) gives the example of slavery in the seventeenth and eighteenth centuries United States: "If people concerned with morality really want to have an impact, they should stick to prescriptions that people might be able and willing to follow. They should demand *better treatment* of slaves rather than *the abolition* of slavery" (emphasis added, Carens 1996, 165). Therefore, there is a tension between what we ought to do (idealistically) and what we can do (realistically).

The tension between the idealistic and realistic approach can be read as analogous to the tension between "ideal" and "non-ideal" theory in mainstream political theory (see Simmons 2010; Valentini 2012; Stemplowska 2008; Hamlin and Stemplowska 2012). John Rawls, who first introduced this distinction, contends that there should be a sequential ordering of theories: ideal theory before non-ideal theory. This is because "until the ideal is identified, at least in outline - and that is all we should expect - nonideal theory lacks an objective, an aim, by reference to which its queries can be answered" (Rawls 1999a, 89–90). While there have been heated debates about the priority of ideal, I contend that, except for the cases of indisputable injustice such as slavery, we should first know whether an actual practice is unjust and, if the answer is positive, we should understand why and how it is from an idealistic viewpoint. John Simmons (2010) observes why we need an ideal theory:

> While some of us may become preoccupied with particular targeted injustices that seem to us especially grievous, none of us in the end forgets that justice is an integrated goal and that activism in one domain has the potential to affect adversely the achievement of justice in another. […] *The political philosopher's first job […] is to refine and argue for an ideal of justice, to say as clearly as possible what goal(s) we must attend to and how we must weigh various factors in our efforts to eventually reach that goal* (emphasis added, Simmons 2010, 36).

I will argue later that it is this ideal of justice that is lacking in the contemporary scholarship of temporary migration.

How can we deal with the tension between what is real and what is ideal in the area of migration? In his latest book, *The Ethics of Immigration*, Carens (2013, Appendix) provides the "shifting presuppositions" approach as a new way to investigate this tension. Carens' approach is premised on "recognizing that any inquiry will inevitably rest upon and be limited by presuppositions about what sorts of considerations are to be taken into account and what are to be left off the table" (Carens 2013, 299). Our moral inquiry cannot work without presuppositions, and the presuppositions chosen have a great impact on the questions we pose and answer.

Carens (2013) focuses on how presupposition affects the concern of feasibility. From the perspective of feasibility, the presuppositions employed in the ethics of migration may be situated on a continuum between the two extremes: "just world presuppositions" and "real world presuppositions" (Carens 2013, 300). The former are used to clarify fundamental normative principles against background assumptions of a world in which all institutions are just, and everyone complies with the principle of justice. The latter, assuming feasibility limits, are employed to provide a principle to guide our actions to achieve a more just society. By putting the presuppositional cards on the table, so to speak, Carens aims to bridge the gap between *what we ought to do* and *what we can do*. In this way, Carens attempts to integrate ethical arguments based on different ideal and realist presuppositions where possible.

I find this approach important in three respects. Firstly, by investigating the actual gap between the realistic and idealistic approaches, we can better understand the deficits of each position (problem-finding). By crafting a realistic theory that is consistent with a long-term ideal, we can develop a richer perspective, which integrates inerasable knowledge and cognitive biases, even in a relatively well-ordered world. Secondly, it disaggregates the ethical issue into the issues of feasibility and of norms (problem-disaggregation). For instance, if there is no ethical conflict about whether an identified social process or structure is unjust (e.g. slavery), we can concentrate on how to address the problem under the constraint of feasibility. However, if there is no normative consensus about the question (e.g. temporary foreign work), we should examine the normative issue *before* talking about the problem of feasibility. Thirdly, if we can clearly identify the gap between ideal and real, we can mediate the tension in a more coherent way (problem-resolving). In other words, we can work on the issue of how to change a social practice only when we can (however roughly) understand the long-term goal. The

better treatment of slavery might be justified when abolition seems unfeasible, but our efforts should be transitionally directed toward its abolition if it is unjust.

3.2 CLEAN HANDS? IDEALISTIC ARGUMENTS AGAINST TEMPORARY MIGRATION

In this section, I review the idealistic arguments about temporary migration. I argue that temporary migration is in a deadlock between the 'open' versus 'discretionary' borders debate in the ethics of migration. I argue that both positions cannot adequately accommodate the agency of temporary migrants because both camps utilise *the community of equal sedentary citizenry* as their normative reference point. This concern for sedentary equality downgrades temporary migration to a non-ideal phenomenon. To put it crudely, the easiest way to achieve the ideal of sedentary equality is to exclude and abolish temporary migration altogether. Because there is scarce theoretical ground to argue for temporariness, it is no wonder that the idealists cannot offer a regulative principle for temporariness.

What presuppositions are employed in the debates between open and discretionary borders? Both discretionary and open borders theorists presuppose *an inclusive and cohesive community of equal citizens* as a key unit of analysis. Their disagreement relates largely to the scope of this community. For discretionary border theorists, the key reference unit is a *national* community. Therefore, the desirability of temporary migration is assessed by comparing migrants' status, rights, and identity to those of nationals. For open border theorists, in contrast, the reference unit is a *cosmopolitan or universal* community of humanity. Accordingly, the desirability of temporary migration is assessed by comparing their enjoyment of freedom to the ideal of cosmopolitan citizenship heralded by universal human rights norms.

Because the scope of analysis is different, their arguments conflict. However, it would be misleading to posit these two positions as binary opposites. Many contemporary scholars understand the relationship between particularity and universality as constitutive and iterative. From the non-cosmopolitan side, David Miller (2007) argues that while each national community should enjoy a right to self-determination, each community collectively bears the universal responsibility to secure a minimum set of basic rights that belong to human beings everywhere. From the cosmopolitan side, Seyla Benhabib (2004, 2) identifies the "paradox of democratic legitimacy" which is constitutive

for the regime of liberal democracy: "transnational migrations bring to the fore the constitutive dilemma at the heart of liberal democracies: between sovereign self-determination claims on the one hand and adherence to universal human rights principles on the other." Both agree that the ideal of liberal universality should be embedded in national self-governing communities, which is the pre-condition for cosmopolitan governance. Indeed, while there are differences in emphasis, more and more scholars advocate neither the abolition of state borders nor the complete discretion of state control over borders. Rather, they attempt to outline "fairly open" (Bader 1997) or "porous borders" (Benhabib 2004), which are supposedly consistent with the liberal as well as the democratic ideal of equal citizenship.

Let me investigate the similarity of principles between the two camps. For both discretionary and open border theorists, the inclusion of long-term residents is already a common norm. While the substantive principles of inclusion differ slightly, most scholars agree that the receiving country should offer a path to permanent residence and citizenship for long-term residents (Walzer 1983; Rubio-Marín 2000; Kostakopoulou 2008; Miller 2008; Carens 2013). The main difference is the numbers of migrants to be included. For discretionary borders theorists, there should be some limits on numbers because if a state admits too many, it may collapse the communal values such as welfare, cohesion, nationality, security, and so on. For instance, Miller (2014, 200) contends that a national community "might have reason to limit the flow of immigrants, on the ground that the process of acculturation […] may break down if too many come in too quickly." At the same time, this partial closure is justified in favour of long-term inclusion of migrants as equal citizens: "[migrants] have to be admitted as equal citizens, and they have to be admitted on the basis that they will be integrated into the cultural nation" (Miller 2008, 376). Open borders theorists, in contrast, are minimalist in this regard and therefore advocate 'more open,' if not 'completely open' borders. It is important to note that this norm is partly embedded in actual state practice by virtue of either "self-limited sovereignty" (Joppke 1999) and/or the "international human rights regime" (Soysal 1994). Therefore, the open and discretionary border theories can converge at least in favour of the inclusion of long-term residents within a particular democratic community.

What about the admission of temporary migrants? Interestingly, theorists both of open and discretionary borders find the situation of temporary migrant troubling. There are three main reasons why admitting migrants on a temporary basis is considered to be

morally problematic: exclusion, exploitation, and domination. These reasons cut across both discretionary and open borders theories insofar as they base their account on the ideal of equal sedentary citizenship. Therefore, there is good reason for both to believe that temporary migration programmes are undesirable and non-ideal. This diagnosis inevitably leads us to the conclusion that if we want to keep our hands clean, the best way to do so is refrain from admitting migrants on a temporary basis altogether.

3.2.1 Exclusion

The most common argument against temporary migration is that it *excludes* non-citizens from the path to citizenship (Carens 2008; Lenard 2012). While temporary migrants enjoy basic human rights protection, access to the rights attached explicitly to citizenship in host states is limited. These include the rights to diplomatic protection, secured residence and return, free choice in employment, non-contributory social benefits, and political rights. The protection of these rights is still primarily reserved for permanent residents and citizens. By admitting migrants only temporarily, the state prohibits them from becoming equal citizens. In essence, it excludes them from citizenship as the "right to have rights" (Arendt 1979).

For discretionary border theorists, what is crucial is the preservation of the liberal democratic character of the political community. The presence of long-term second-class citizens within a state is a thorn in the side of this ideal. In his classic work on membership, Michael Walzer (1983) made a compelling argument against admitting migrants on a strictly temporary basis. While he thinks that it is legitimate and necessary for states to exercise almost full discretion at its border, he problematises the exercise of discretionary power once individuals are within the national territory:

> "Democratic citizens […] have a choice: if they want to bring in new workers, they must be prepared to enlarge their own membership; if they are unwilling to accept new members, they must find ways within the limits of the domestic labor market to get socially necessary work done. And those are their only choices" (Walzer 1983, 61).

As a matter of "political justice," Walzer (1983, 62) believes, "the processes of self-determination through which a democratic state shapes its internal life, must be open, and equally open, to all those men and women who live within its territory, work in the

local economy, and are subject to local law." Once migrants have been admitted, they should be put on the path to citizenship. Otherwise, they are subjected to a "tyranny" exercised by citizens. For Walzer, the normativity of this political justice depends on the "community of character," which is the reason for both its "closedness" and "openness". On the one hand, the (democratic) community of character legitimises a state's discretion at the border in order to preserve its self-determination. On the other hand, the same community of character delegitimises the state's discretion inside the territory.

Open border theorists part company with discretionary border theorists only with respect to discretion at the border. For them, the asymmetrical treatment of the inside and outside is morally problematic. In other words, they do not accept the assumption that there is a zero sum trade-off between keeping external and internal borders open and, therefore, contend that both borders should be open (see Dummett 2001; Cole 2011; Carens 2013). Temporary migration programmes, which admit migrants to the territory but not to the citizenry, are premised upon the unreasonable distinction between two borders. Therefore, strictly temporary admission of migrants is nothing but the penetration of borders on the inside, which generates the asymmetrical distinction between citizens and aliens (Bosniak 2006).

If this exclusion is the problem, should all migrants be admitted on a strictly permanent basis? Probably not. For instance, virtually no scholar requires that tourists and passengers be admitted as future citizens of the country of reception. As Walzer (1983, 60) himself notes, even when they are set on the road of citizenship, "[t]hey may choose not to become citizens, to return home or stay on as resident aliens. Many--perhaps most--will choose to return because of their emotional ties to their national family and their native land." The possibility of voluntary return is not precluded. While some scholars argue for automatic and/or mandatory naturalisation for long-term residents (Rubio-Marín 2000; De Schutter and Ypi 2015), they set the issue of temporary migrants aside. Therefore, what scholars require is that every migrant should have a fair option to exit from temporariness through either naturalisation or return.

However, by setting permanent residence or citizenship as the key reference statuses to which migrants will be included, temporariness is seen as a deviation or anomaly, which may be remedied only in the long run. We can say that there is a need to include long-term residents into the equal citizenry, but this cannot explain how we should treat temporary migrants who have not yet established the long-term tie to the territory or

have intentionally chosen to be temporary. What rights and obligations shall temporary migrants enjoy as such? Should we encourage migrants to be integrated into the country of residence even if it is not their desire? The fair acquisition of permanence and citizenship cannot underpin a complete approach to temporariness. As I will argue later, this obsession with permanence is strongly influenced by an assumption most scholars adopt: temporariness is inferior to permanence. To be clear, I am not arguing that there is no need to give migrants fair access to citizenship. Rather, I am arguing that we need to draw on a more nuanced and idealistic picture of temporariness. .

3.2.2 Exploitation

The denial of access to citizenship may not be a central concern for migrants themselves. The second argument claims that temporary migration is undesirable because it is *exploitative*. Exploitation means that one party systematically takes unfair economic advantage of others. While this criticism is common, especially for low-skilled temporary migration or so-called guest-worker programmes, this is not necessarily the case for other categories of temporary migrants, such as highly-skilled migrants, intra-company transfers, international students, and so on.

Many scholars argue that temporary migrants often suffer from exploitation (Attas 2000; Lenard and Straehle 2010). To be sure, temporary migration programs may be exploitative if they tie migrants strictly to specific employers, rather than to specific sectors and/or occupations. I contend that, except for the right to free choice of employment, any differential treatment in the workplace is morally objectionable. However, if these restrictions are adequately restrained, is there anything morally wrong with temporary migration?

The critical question is to what extent is the exploitation of temporary foreign workers related to their status. Lea Ypi (2016) argues that if we take the issue of exploitation seriously, we should aim to abolish the exploitation of workers in general and not just the exploitation of migrants as a special category. Ypi (2016, 151-152) starts by asking the question: "are temporary migrant workers exploited in virtue of being workers or of being guests or both or neither?" There are at least three answers. Firstly, one may think that temporary migrants are exploited because *as guests* they are deprived of a significant range of social and political rights. Secondly, temporary migrants may be exploited

because *as workers and guests* they receive less than their fair share, which is again less than what natives get. Thirdly, temporary migrants may be exploited *neither as workers nor as guests* but because of their relative deprivation. This means that their resources are insufficient to lead a minimally decent life in the receiving country whereas they might be sufficient for living in the sending country.

Ypi (2016, 173–74) argues that none of these accounts can adequately capture the wrongness of temporary foreign work and concludes that "[e]ven if guestworker programs don't exploit each individual guestworker, they operate in a global institutional structure that exploits workers as members of a collective: the collective composed by all those who sell their labor for a living or, to put it in more familiar terms, the collective we refer to with the term 'working class.'" Certainly, by tying them to a particular employer or preventing freedom of employment, temporary migration programs make migrants more vulnerable than sedentary workers. However, this does not address the problem of embedded exploitation or 'proletarian unfreedom' which is structurally embedded within the global market system.

It is important to note that the above argument does not deny that temporary migration involves exploitation, and temporary migrants are indeed exploited as a working class. However, there is no easy way to reduce the degree of exploitation of temporary migrants. What we might best hope for is to ameliorate their exploitation and to equalize it with that of sedentary citizens. If the current exploitation of sedentary citizens is problematic, then the exploitation of temporary migrants remains morally troubling since exploitation is unjust as such. We usually feel uncomfortable when temporary migrants are severely exploited even if their living condition may be far better than in their country of residence. However, many migrants wish to leave their home countries and work abroad, even when they know that they will be exploited. Philip Martin (2006: 40) sets out the paradox we face: "[w]hat is worse than being 'exploited' abroad?" For many temporary migrants, ironically, the answer is "Not being 'exploited' abroad."

The problem of exploitation is multifaceted and difficult to tackle. Admitting temporary migrant workers inevitably increases the numbers of individuals exploited in a resident country. Therefore, from a normative viewpoint, the path of least resistance for eliminating this exploitation is to exclude temporary migrants entirely.

3.2.3 Domination

The third argument finds temporary migration problematic because it is *dominative*. While the arguments of exclusion and exploitation describe the unjust situation of non-citizens and workers, respectively, the argument of domination focuses on the ability of temporary migrants to live meaningful lives, which depends on the embedded socio-political structure. In contrast to exclusion, it focuses on actual and possible interferences with their autonomy on an arbitrary basis. In contrast to the exploitation view, it highlights how a migrant's status and his life-prospects are dependent on the socio-political structure of the host society. As I will argue in the next chapter, the concept of domination provides us with a distinct perspective in understanding the unfreedom of temporary migrants. However, for now, I will investigate how this concept has been employed in the mainstream literature.

Temporary migration, on this account, is problematic because it creates a disenfranchised and powerless class of people. As Walzer (1983) observes:

> These guests experience the state as a pervasive and frightening power that shapes their lives and regulates their every move – and never asks for their opinion. […] As a group, they constitute a disenfranchised class. They are typically an exploited or oppressed class as well, and they are exploited or oppressed at least in part because they are disenfranchised, incapable of organizing effectively for self-defence (Walzer 1983, 59).

His classic diagnosis correctly underlines how the problem of domination underpins those of exclusion and exploitation. Because they are disenfranchised, temporary migrants find it difficult to organise effective oppositional movements; they are often at the mercy of employers because their status is designed to make them accept hard work and low wages. While these forms of inequality do not necessarily apply to all temporary migrants, such as skilled migrants, jurisdictional and intentional temporariness are likely to increase the vulnerability of migrants to societal and political domination.

Being deprived of political membership implies that temporary migrants are unable to appeal to the protection of state institutions to defend themselves from arbitrary uses of power. While domination is related to the two arguments above, it is important to note the difference in emphasis. Exclusion can cause domination if governments prevent migrants from naturalising without proper consideration. While the argument from exclusion problematises disenfranchisement without a path to citizenship, the

domination perspective focuses on the actual life-courses of migrants who are vulnerable to the arbitrary exercise of power.

If temporary migrants are inevitably dominated due to their status, how can they emancipate themselves from domination? The idealists' answer is somewhat paradoxical: they will be emancipated from domination by becoming citizens. For idealists, temporary migrants are generally excluded, exploited, and dominated because they are temporary, and sedentary citizenship is the necessary condition for emancipating them from this vulnerability. However, if the problem of temporariness can only be resolved by making them permanent, we are left with an apparent paradox. If temporary migration programmes inevitably involve this kind of domination, the best normative argument is not to admit temporary migrants at all. As Ruhs (2013, 172) concludes, "[t]he most likely clean-hands alternative to guest worker programs for low- and medium-skilled workers is exclusion," that is, no admission of temporary migrants.

3.2.4 The Limits of Idealistic Approaches

Considering the three perspectives, I believe that each argument offers an important insight into the problem of temporariness. However, unfortunately, while idealistic scholars very well *identify* the problem of temporariness, they very poorly *address* it. The proposed solution is akin to saying that the problem of childhood can only be resolved by turning children into adults. Even more radically, to deal with the problem of childhood, the best way is not to have children at all! However, as children are not adults, the question of childhood will never be answered no matter how one expands the scope of adulthood. As Elizabeth F. Cohen (2009, 12) observes, "[i]mmigrants naturalize, children mature, even felons can be rehabilitated. However, whether or not any given individual, or even a whole group of semi-citizens, is awarded full citizenship, it remains the case that classes who do not have full citizenship are a permanent fixture of any democratic state." When we set out sedentary citizenship as a reference point, the status enjoyed by temporary migrants inevitably becomes an anomaly and is degraded as non-ideal. And, because it is an anomaly and non-ideal, we then conclude that no coherent approach to temporary migration is possible other than advocating the long-term inclusion through which temporary non-citizens become sedentary citizens.

More importantly, perhaps, is that all three perspectives are also inward-looking. Every kind of injustice argued above is based on the comparison between temporary migrants and sedentary citizens of the country of reception. Indeed, the attraction of this approach is that by comparing the freedom of individuals within a key reference unit, namely a nation-state, we can easily measure the difference in treatment of temporary migrants. However, attractive as it may be, it is not well-equipped to evaluate the freedom which temporary migrants enjoy when moving across territorially separated communities. In the face of the social reality that many migrants voluntarily choose to migrate on a temporary basis, the simple eradication of temporariness is not a satisfactory answer. Therefore, while the three perspectives provide the important criteria for investigating the problem of temporariness, we cannot shy away from developing a more nuanced conception of justice to accommodate migrants' agency under existing intergovernmental structures.

3.3 DIRTY HANDS? THE REALISTIC ARGUMENTS FOR TEMPORARY MIGRATION

I have argued that despite the apparent tension between open and discretionary borders views, there is a good reason for both to take a sceptical stance on temporary migration. For both camps, temporary migration is problematic. Insofar as we are only concerned with the idea of sedentary equal citizenship, logically the best way to be consistent with this idea is to abolish temporary migration altogether, either by offering all migrants sedentary citizenship or by admitting no migrants at all.

The realistic argument for temporary migration presses on the reality of a world that is highly unequal and non-ideal. Its defenders acknowledge that temporary migration inevitably involves 'second-best' policies that lead to 'dirty-hands' solutions. For them, the abolition of temporary migration is worse than expanding temporary migration under the current reality. They argue that, by trying to keep their hands clean, idealists dismiss the agency of temporary migrants and policies promoting its exercise produces a better outcome.

The principled argument for temporary migration were first articulated by Daniel Bell (2006). Investigating the empirical cases of temporary foreign workers in Singapore and Hong Kong, Bell (2006, 304) proposes three conditions which may justify the temporary admission of foreign workers with a limited set of rights: "(1) [if] this arrangement works

to the benefit of migrant workers (as decided by migrant workers themselves); (2) it creates opportunities for people in relatively impoverished societies to improve their lives; and (3) there are no feasible alternatives to serve the ends of (1) and (2)." His argument relies heavily on the apparent trade-off in the East-Asian context, where "[t]he choice, in reality, is between few legal openings for migrant workers with the promise of equal citizenship and many openings for migrant workers without the promise of equal citizenship" (Bell and Piper 2005, 210).

If, from this broader perspective, we commit to the equal treatment of migrants after admission, it implies rejecting more admissions of prospective migrants and making them worse off in a relatively impoverished region. Moreover, even if a developed country lowers the number of official admissions, many potential migrants would likely choose to emigrate and work illegally. The argument, thus, invokes yet another choice: whether migrants should be legally admitted with some rights or illegally with more limited rights, if indeed any at all. Therefore, for Bell (2006), expanding temporary foreign worker programs inevitably entails a choice to admit more workers from impoverished regions and thus reduces global poverty while disincentivising illegal migration.

While Bell (2006) cautions that his analysis is not necessarily exportable outside East Asia, Howard Chang (2011) makes the case in the context of Western liberal democratic countries. Chang (2011, 93) argues that liberals are confronted with the "immigration paradox," according to which "our commitment to treat these workers as equals once admitted would cut against their admission and make them worse off than they would be if we agreed never to treat them as equals." For Chang (2011), to be faithful to liberal egalitarian ideals, we should adopt cosmopolitanism as the only coherent approach, which would result in liberalised immigration policies and a reduction in global inequalities in economic opportunity. Moreover, we should grant migrants more rights and smoother access to permanence and citizenship. However, this perspective must face a constraint of feasibility because the large majority of self-interested citizens in the developed countries are unlikely to adopt such policies. If it is impossible to satisfy the needs of open borders and equal citizenship, Chang (2011) argues that we should find a feasible second-best policy which inevitably and for now falls short of our ideals. If we compare "exclusion" (fewer admissions of migrants with more rights) with a "guest worker program" (more admissions of migrants with limited rights), the latter constitutes an improvement over the former, namely the legitimisation of the status quo of restricted

labour mobility. Therefore, Chang (2011, 114) concludes that "cosmopolitan liberals should support liberalizing reforms that include guest worker programs, even while seeking the broadest rights possible for aliens within the constraints of political feasibility."

Political feasibility is a key concern for realists. In his provocative book, Ruhs (2013) also advocates the expansion of temporary labour migration programmes that selectively restrict migrant rights while providing many more workers with access to the labour markets of higher-income countries. Based on his analysis of the "trade-off between numbers and rights," Ruhs (2013, chap. 7) asks what specific rights of migrant workers can be legitimately restricted and for how long. He has a complex and multi-layered argument for his view which is difficult to summarise here (for some critical evaluation of his proposal, see Chapter 6 of this thesis); however, his message is clear: if certain conditions are met, there is a strong normative case for introducing temporary migration programmes for low- and medium-skilled workers in developed countries.

The above arguments are designed for pragmatically improving and expanding the actual temporary migration policies under the constraint of feasibility. Above all, the authors recognise that temporary migration programs fall short of ideals and inevitably constitute a second-best policy. However, as Chang (2011, 114) notes, "[w]hile it would be a mistake to pretend that any guest worker program is ideal from a liberal perspective, it would also be a mistake to sacrifice worthwhile reforms because they fall short of the ideal." For this view, expanding well-designed temporary foreign worker programmes is better and more desirable than the status quo, which excludes many prospective migrants from working in higher income countries. As we saw above, while the idealists propose several perspectives to assess the injustice of temporary migration, their arguments are poorly equipped to address the empirical problems. In contrast, realists seem to propose feasible ways to guide our actions for the better, while recognising that the results fall short of ideals.

However, the realistic approach has a drawback. The strength and weakness of the realistic approach are that its moral evaluation is context-specific. Realists often employ the method of 'patch-working' of migrants' rights based on a cost-benefit analysis. If recognising the specific rights of migrants is costly for a receiving country against the backdrop of nativist sentiments and welfare spending, the restriction of migrants' right is tolerated, if not justified. However, such instrumentalist logic misconceives the nature of

rights itself. Christian Joppke (2001, 55) observes that "[i]f one defines individuals' rights as 'trumps' over the preferences of the government-represented majority in society, one could argue that immigrants—by definition excluded from this majority—are the most dramatic test case of rights in general." If we closely observe the evolution of non-citizens' rights after the Second World War, the rights have often 'trumped' the cost-benefits rationales of state officials. By instrumentalising the concept of rights, the realists see temporary migrants just as passive recipients of rights, not as active subjects of autonomy. The political autonomy of temporary migrants is, to put it crudely, manipulated in-between the conflictive interests of the countries of residence and origin.

Of course, it would be too demanding for realistic scholars to establish an idealistic account of the agency of temporary migrants wedged in-between two countries. Indeed, as I will argue in the next section, it is the task of a political philosopher to articulate such an idealistic account. Short of idealistic arguments, the most plausible path for realistic scholars to accommodate the 'in-between' status of temporary migrants would be to find out a better balance between the three parties pragmatically. However, to evaluate whether the 'dirty hands' policies are successful, we need to understand how we measure success at the outset. Such measure should be related to an ideal of justice. We cannot evaluate non-ideal policies as morally permissible if the standards of permissibility are not set by an idealistic account. Otherwise, there can be no systematic ground to assess the permissibility itself (see Simmons 2010).

One may argue that it is possible to conduct a diagnosis of comparative injustice without knowing the just blueprint. This is true when we generally reach a consensus about an injustice, such as slavery and absolute deprivation. However, in the case of temporary migration, the normative evaluation is not straightforward. It is at this point that we need an ideal theory of temporary migration. Without knowing the goal which may justify 'dirty-hands' policies, we cannot assess the justifiability and permissibility of temporary migration.

3.4 REVISITING THE GAP BETWEEN REALISTIC AND IDEALISTIC APPROACHES

As I have argued above, in the ethics of temporary migration, there is a significant gap between the idealistic and realistic approaches. On the one hand, idealists presuppose that temporary migration is a non-ideal pattern of human mobility, inevitably involving

the problems of exclusion, exploitation, and/or domination. While there is no systematic elaboration of what justice requires for temporary migration, a simple lesson learnt from the idealistic argument is that we should abolish temporary migration if we wish to keep our hands 'clean.' On the other hand, by explicitly acknowledging that temporary migration involves second-best policies that 'dirty' our hands, pragmatic realists abandon the search for the long-term goal and normative coherence. While their proposals would improve the condition of temporary migrants if properly implemented, we cannot understand how we should assess and weigh the conflictive interests involved in the 'dirty-hands' policies. What idealists and realists hold in common is an understanding of temporary migration as a non-ideal phenomenon. That is, the temporary pattern of human mobility is always a deviation from an ideal point of view. Temporary migration is inherently non-ideal and for this reason we cannot construct a coherent account of it.

Why is temporary migration regarded as a non-ideal phenomenon? Ultimately, the answer is that scholars implicitly or explicitly presuppose that *temporary movement is a deviation from human nature.* Behind this presupposition is a naive anthropological premise about the human motivation to move. As Walzer (1983: 38) notes, "[h]uman beings [...] move about a great deal, but not because they love to move. They are, most of them, inclined to stay where they are unless their life is very difficult there." Individuals attempt to change their place to live if and only if they find it difficult to live there. International migration, in particular, unskilled temporary labour migration, is regarded as non-ideal because scholars find structural injustice behind their motivation to move, such as relative and absolute deprivation. If we could eradicate such structural injustice, individuals will become less mobile and able to enjoy their communal life where they are born - this is what is presupposed in the ethics of temporary migration. Needless to say, this assumption becomes problematic if we consider the globally mobile superrich who enjoy "flexible citizenship" and travel back and forth to maximise their life-prospects (Ong 1999).

Is it true that human beings abhor moving? To check the plausibility of this assumption, we should first ask what will *not* change in an ideal world. The ideal world should not be the perfectly ideal world at least, where the question of justice is no longer needed. A good starting point is what Rawls (1999) called "the circumstances of justice." Following Hume, he identifies that two conditions are necessary for any conception of distributive justice to apply: moderate selfishness and moderate scarcity. In the ideal world presupposition,

people can legitimately pursue their own ends while also possessing a natural sense of justice that motivates them to comply with the principles of justice. At the same time, resources are not abundant but moderately scarce; otherwise, there is no need to distribute the goods among people and to engage in cooperative ventures for mutual advantage. Of course, this list of circumstances is not exhaustive. The relevant level of abstraction depends on the ethical question one wants to answer.

The crucial question is whether we should add the anthropological assumption of natural human immobility to the list of the circumstance of (international) justice. If human beings abhor moving, we can claim that, in the ideal world, people would prefer to stay in the place where they are born. And by adding this assumption to the list, we can imagine an immobile world of independent states as an ultimate normative goal. This is what Rawls does (1993, xlv) when he limits the subject of justice to "a basic institution [where] we enter only by birth and exit only by death." However, he does not prove this assumption either philosophically or anthropologically. Nor do Walzer (1983) or Carens (1987)[6] prove it.

Why would we assume that the ideal world is necessarily sedentary? One may dispute this point by arguing that, even if people move temporarily in the ideal world, the relevance of the topic for justice is negligible. In fact, Rawls (1999b, 9) infamously asserts that "[t]he problem of immigration is not [...] simply left aside, but is eliminated as a serious problem in a realistic utopia." David Miller (2016) follows a similar line. Miller (2016, 16-17) explicitly claims that "the immigration *issue* would either disappear altogether or at least become much less pressing in a world that was configured quite differently from our own." For his preferred vision of a more favourable circumstance, "(1) the volume of movement would predictably be much smaller than in a world such as ours, disfigured by gross economic inequalities, and (2) movements would be multilateral and largely reciprocal because there would be no general reason (climate or natural beauty aside) for preferring to live in one state rather than another" (Miller 2016, 17).

However, these accounts beg the question, since the conclusion is proven by the assumption of the argument. Even if we adopt the assumption that people do not love to

[6] In his classic essay, Carens (1987, 270) endorses this Walzerian assumption: "as Walzer observes, most human beings do not love to move.' They normally feel attached to their native land and to the particular language, culture, and community in which they grew up and in which they feel at home. They seek to move only when life is very difficult where they are. Their concerns are rarely frivolous."

move, this cannot rule out the case that people may possibly choose to move temporarily when they find it rational and valuable.

If no one can prove this assumption, we should not add it to the list of the circumstance of (international) justice. Accordingly, we should not presuppose that temporary migration is a deviation from human nature and will disappear in the ideal world. Some may wish to stay in their country of residence; others may not. This is their choice. Like choosing their jobs and partners, how they structure their life plans here and there derives from their autonomy. If we consider intentional temporariness not as an anomaly, but as normality, we would assume that in the ideal world, some people would voluntarily choose to move temporarily. By admitting the possibility that temporary migration does exist in the ideal world, we can probe what conflicts could arise because of temporariness and what is the ideal theory for dealing with them.

What challenges does temporary migration pose in the ideal world? Rainer Bauböck (2011, 684–89) submits a thought-experiment of "a hypermigration world," where a majority of citizens are non-residents, and a majority of residents are non-citizens in most countries. This thought-experiment is important to understand how temporary migration can challenge our conventional notion of territorial and intergenerational citizenship. In this hypothetical world, the idea of an intergenerational territorial community of citizens would no longer make sense, and birthright citizenship would have to be replaced by a strict residential principle, *ius domicillii*. In such a polity, nobody is either immigrant or emigrant (categories that make only sense in relation to a sedentary reference population), and people become citizens as accidental co-residents. Bauböck (2011, 686) contends that this transformation would have a corrosive effect on the intergenerational and territorial character of citizenship, which is not only morally defensible but a functional requirement for stable democratic governments. Such corrosive effects may not be so pressing in our current relatively sedentary world; however, it is wrong to assume that temporary migration will no longer be a problem in the ideal world, even if it were to become a dominant pattern of human mobility.

If we drop the assumption of natural immobility of human beings, we will realise that temporary migration challenges the ideal of *sedentary equal citizenship* itself. It challenges, in particular, the ideal of *inclusion* and *cohesion*, to which all liberal democrats aspire. As I argued in the second section, many scholars have problematised the long-term exclusion of migrants from sedentary equal citizenry. The ideal of *inclusion* is premised on the

anthropological assumption that most migrants want to settle and become a member of the sedentary equal citizenry. However, this account lacks an argument about intentional temporariness. What rights and duties should temporary migrants enjoy before their permanent inclusion to the host state? How shall we deal with the social and economic inequality of temporary migrants who are politically excluded from equal citizenry? At the same time, temporary migration also challenges the ideal of *cohesion*. If intentionally temporary migrants invest little time in building stable relationships in the new country, how can mutual respect and trust be fostered between temporary and sedentary citizens? Shall we impose the duty of inclusion and integration for those who intend to stay temporarily? Which countries should be responsible for dealing with these challenges?

All these questions are oriented toward constructing an ideal theory of democratic justice in temporary migration. In contrast to the conventional idealistic accounts, I contend that temporary migration is not a non-ideal pattern of human mobility. Rather, we need a more coherent account of what goal we aspire to and how we weigh factors in realising that goal in the long run. Even if it is impossible and normatively undesirable to include all temporary migrants as sedentary equal citizens, we can, instead, argue for a *sui generis* form of migrant citizenship which they exercise in-between their countries of residence and origin. Even if we cannot specify the exact limit of rights and obligations for migrants, we can design the international basic structure within which the dilemma between open borders and equal citizenship is to be democratically resolved. What is crucial is not the specific rights and obligations attributed to temporary migrants, but the basic structure of justice where the conflicts over one's primary interests are to be transnationally weighed and mediated. This account is needed to assess the 'dirtiness' and 'cleanness' of temporary migration programs in a more coherent way.

3.5 CONCLUSION

In this chapter, I critically engaged with the emerging scholarship on the ethics of temporary migration. After distinguishing idealistic and realistic approaches to the ethics of migration, I argued that, on the one hand, idealistic scholars correctly *identified* possible injustices in temporary migration but failed to *address* them. To put it crudely, what we can learn from their arguments is that temporary migration is a non-ideal pattern of human mobility, which always falls short of the liberal democratic ideal. On the other

hand, realistic scholars proposed the expansion of temporary migration programs as a feasible second-best policy. While I have sympathy for their proposals, their argument is too context-specific and lacks a systemic account for evaluating the success or failure of temporary migration. To evaluate the 'dirtiness' and 'cleanness' of temporary migration policies, we should know how to measure their success beforehand.

To mediate the tension between realistic and idealistic approaches, we should rethink the assumption of human immobility that we usually take as given. If the world of no-temporariness is ideal, we will set the sedentary society within a separated jurisdiction as an ideal goal. However, I questioned the validity of this assumption and underlined the need to establish a new idealistic account of temporary migration. On the one hand, in an ideal world where all temporary migration is intentional, we have to assume that intentional temporary migration will not be just a marginal phenomenon. On the other hand, in an ideal world where all temporary migration is intentional, it may still cause problems for democratic continuity and stability. The issue at stake is, thus, not the unfeasibility of open borders, but the lack of a coherent ideal of democratic justice in temporary migration. Resurrecting the ideal of transnational democratic justice is the political theorist's first job to deal with the ethics of temporary migration, which is the task of the following chapters.

Chapter 4: Freedom and Temporary Migrants

INTRODUCTION

I have argued, in Chapter 3, that normative literature on migration and citizenship has prioritised the 'paradigm' of sedentary citizenship. According to this paradigm, temporary migrants are second-class citizens at best in both sending and receiving countries. They may only become free and equal citizens either by return or by naturalisation. While temporary, they cannot be either free or equal citizens. Arguing against this paradigm, in the following chapters, I aim to describe the condition of freedom that temporary migrants would enjoy *qua* migrants. To put it another way, I argue for a possible image of the citizenship *of* migrants, as distinct from citizenship *for* migrants that migrants only acquire either by return or by naturalisation. The main task is to determine how to secure the freedom of migrants in the absence of sedentary citizenship options for them.

To this end, this chapter aims to construct a middle way account of freedom located between idealistic and realistic approaches. On the one hand, it is idealistic in the sense that it begins by clarifying the idealised condition of freedom. I posit, in particular, 'non-domination' as the ideal state of freedom. On the other hand, it is realistic in the sense that this ideal state of freedom is used as a benchmark against which sources of unfreedom, that is, domination, are criticised. The aim of this chapter, in other words, is to provide a conceptual framework that aims to assess how and to what extent individuals are vulnerable to domination.

Freedom as non-domination is a concept developed by recent neo-republican scholars, most prominently Quentin Skinner and Philip Pettit, in the course of resurrecting the neo-Roman idea of freedom distinct from a modern or classical liberal idea of freedom. For neo-republicans, freedom is defined as the absence of domination. Domination is, in turn, broadly defined as subjection to, or dependence on, the threat of arbitrary interference by others. Non-domination is the condition under which one is independent of, or immune from, such a threat of arbitrary interference. I contend that, if properly constructed, the concept of non-domination not only helps us to understand just how vulnerable to

domination temporary migrants are, both privately and publicly, but also will assist in providing arguments for eliminating these injustices.

While the concept of non-domination has gained many proponents in recent years, there remain many unresolved questions about the conception that need to be openly tackled. What is non-domination? What difference does non-domination make in relation to other conceptions of freedom, such as non-interference or the positive freedom of self-government? Which conception of non-domination fits international migration? What are the specific conditions for migrants to enjoy non-domination? These questions will be answered in this chapter.

When doing so, I aim to make three contributions. Firstly, by scrutinising the implications of different conceptions of freedom, I aim to clarify the distinct value of non-domination in the discussion of international migration. The rival conceptions of freedom, especially freedom as non-interference, are ill-suited to address the intentional and jurisdictional vulnerabilities of temporary migrants. We need, in particular, to outline an account of freedom which can justify the positive role of states in transnationally protecting and resourcing the basic capacities of migrants.

Secondly, while I follow the basic definition of domination as dependence on arbitrary power, I will make some modifications about how to understand arbitrary power. My conception focuses on the interactive process of justification between a power-holder and power-bearer and agencies instituted in this process. In short, in my account, power is arbitrary insofar as it is not open to effective contestation such that a power-holder fails to track the interests of those over whom the power is exercised.

Thirdly, while the dominant theory of non-domination applies the degree of domination only with respect to their host states, I apply this framework to consider the condition of freedom of migrants whose membership is divided between two different sovereign states. I also underline the importance of democratic process for setting the minimum thresholds of basic capabilities, which migrants are entitled to enjoy regardless of their residential status or life plans.

In the first section, I argue that the concept of (non-)domination is plausible in analysing the freedom of migrants by exploring (1) its conceptual fit with the topic and (2) how it sheds new light on the justice and legitimacy of citizenship and migration policies in comparison to the other conceptions of freedom. From the second to the fourth section, I explore the concept of freedom as non-domination, introducing a range of

clarifications in order to construct a robust conception applicable to status inequality. In the fifth section, I apply this conception to the topic of temporary migrants, showing what would be broadly required for migrants to enjoy freedom as non-domination in relation to one another in both sending and receiving countries. This account offers a starting point for the next two chapters, which examine the conditions of just temporary migration from the perspectives of justice and legitimacy.

4.1 WHY DOMINATION?

Non-domination, I argue, offers us a yardstick to understand the freedom of migrants. In this section, I will elucidate freedom as non-domination's distinct value and its distinctive contribution to the understanding of migrants' freedom in relation to other rival conceptions of freedom.

4.1.1 Conceptual Fit

Domination, broadly understood as dependence on arbitrary power, seems to capture the actual sufferings of temporary migrants. *Prima facie*, even with this simple definition, the concept of domination identifies temporary migration as problematic.

The problem of temporary migration can be divided into two broad issues of justice and legitimacy. Social justice in migration examines the condition of freedom for individuals who have moved or plan to move relative to other migrants and sedentary citizens. On the one hand, within sending societies, temporary migrants may suffer societal domination by some intermediaries, such as brokers or smugglers, or their choices may be vitiated merely due to a lack of resources or protection. After their departure, in the receiving country, they may be vulnerable to social domination in their workplace or in civil society due to a lack of opportunities. The question is, then, how to secure a publicly recognised status that enables them to live without the fear of social domination here and there.

The question of justice is closely related to the question of legitimacy. In relation to the sending countries, migrants may be vulnerable to governmental domination insofar as emigration and citizenship policies, including pre- and post-departure policies, are not adequately legitimised by a democratic process through which their interests are

represented. I will come back to the issue about what kind of democratic process and representation are necessary for legitimation in Chapter 6. The same thing can be said about their relationship with the receiving countries. They are vulnerable to public domination insofar as immigration and citizenship policies in receiving countries are not properly legitimised, or insofar as temporary migrants cannot play a specific role in legitimising these policies.

It should be noted that this description of the problem is different from other related concepts, such as exclusion, exploitation, and oppression. While I already argued in Chapter 3 the limits of idealistic arguments employing the concept of exclusion and exploitation, this section discusses conceptual problems in addressing international migration.

A concept of exclusion captures a wrong where one's status is categorically distinguished from those who are included. The supposed solution to exclusion is inclusion, but the perspective of domination does not see inclusion as the end of injustice. As the literature on the "citizenship gap" (Brysk and Shafir 2004) shows, it has become difficult to maintain that status citizens are free and equal in every respect. Rather, there is no incoherence in regarding some vulnerable sedentary citizens as included but dominated at the same time. While exclusion is conceptually indifferent to inequality or domination within the category of the included, domination can explain how exclusion is wrong insofar as it renders one dependent upon the arbitrary power of another. The underlying problem is not exclusion *per se,* but the fact that exclusion would render one more vulnerable to arbitrary, public or private, power.

Exploitation is a specific type of domination, focusing upon the economic relationship between workers and employers or between classes. While exploitation explains the chief vulnerability of migrant workers in the economic domain, this concept is too narrow to capture injustices in migration more generally, since not all temporary migrants are workers, and not all workers are exploited. Because the exploitation of migrant workers cannot be fully separated from the exploitation of workers as a class (see Ypi 2016), exploitation cannot function as a general concept to measure the freedom of migrants.

The advantage of the concept of domination is that it can directly address the issue of temporariness. Although exclusion and exploitation problematise the vulnerability of a migrant as a worker and a non-citizen, they concern rather one aspect of the complex vulnerabilities which temporary migrant workers face.

Oppression is a more structurally nuanced concept. For instance, Iris Marion Young (1990) uses oppression more broadly and domination more narrowly. Sharon Krause (2013) further clarified the conceptual domains of oppression and domination, emphasising that non-domination theory may dismiss the structural and often unintentional threats to freedoms, such as gender subordination or racial prejudice, which are primary concerns from a focus on oppression. Certainly, domination is not the concept that explains *all* wrongs. Yet, it can capture a wide part of political injustice caused in and by intentional human actions or coercive government policies. My aim here is to offer a systematic account of freedom in this sense, and I leave open the question of how we can respond to the unintentional collective injustice, which might not be captured by the concept of domination.[7]

The concept of domination thus displays a better conceptual fit when we discuss the issue of migration. If properly constructed, it will also play a functional role in pointing out troubling constraints on migrants' actions as a source of unfreedom in need of justification. Of course, whether domination can satisfy these demands depends on how we define it, which is the primary purpose of the argument below.

4.1.2 Three Conceptions of Freedom

What is the distinctive value of non-domination as a concept of freedom? The main rivals of non-domination are not other concepts of injustice, but other conceptions of freedom. Freedom as non-domination has been presented as a "third concept of liberty," distinguished from the other two conceptions – positive and negative freedom. I examine below what implications and differences will emerge if we apply three different conceptions to the topic of international migration.

In his famous essay, Isaiah Berlin (1969) distinguished negative and positive liberty. On the one hand, the concept of negative liberty concerns "[w]hat is the area within which the subject — a person or group of persons — is or should be left to do or be what he is able to do or be, without interference by other persons" (Berlin 1969, 121). On the other hand, the concept of positive liberty asks "[w]hat, or who, is the source of control or

[7] An attempt to analyse the structural injustices of temporary migration drawing on Young's account, see Nuti (2018). Nuti argues how the vulnerability of EU temporary migrants is structured by the formal and informal processes and how such unjust structural process is unintentionally reproduced and reinforced by temporary migrants themselves and other categories of persons in a vulnerable position.

interference that can determine someone to do, or be, this rather than that" (Berlin 1969, 121–22). As Ian Carter (2016) helpfully summarises, in Berlin's argument, the former implies "a mere *absence* of something (i.e. of obstacles, barriers, constraints or interference from others)," while the latter "require[s] the *presence* of something (i.e. of control, self-mastery, self-determination or self-realization)."

While there is an ongoing discussion about positive and negative freedom, freedom as non-domination is not neatly categorised in terms of negative or positive liberty. For Pettit (1997, 21),

> "Berlin's taxonomy of positive and negative liberty forecloses a more or less salient third possibility. He thinks of positive liberty as mastery over the self and of negative liberty as the absence of interference by others. Yet mastery and interference do not amount to the same thing. So what of the intermediate possibility that freedom consists in an absence, as the negative conception has it, but in an absence of mastery by others, not in an absence of interference?"

Freedom as non-domination is a specific conception of negative liberty in the sense that it primarily requires absence, rather than presence, of constraints in doing something. The main rival of non-domination is, thus, a different conception of negative liberty, commonly referred to as non-interference.

Broadly speaking, the difference between non-domination and non-interference is that, while the non-interference view problematises *any* sort of *actual* interferences, the non-domination view problematises a *specific* sort of *possible* interference. According to freedom as non-interference, A is free insofar as no one *actually* frustrates A's action. In the non-domination view, in contrast, A is free insofar as no one has the capacity to frustrate A's actions on an arbitrary basis (For the discussion, see Lovett, 2010; Carter, 2016).

To understand the difference, consider migration policies from a non-interference perspective. In the context of immigration, enhancing freedom from non-interference would lead to open borders through which people can move without any actual obstacles, barriers or constraints in their residence and employment. Therefore, it would lead to the world of unregulated temporariness. Take the classic open border argument by Joseph Carens (1987). While he admits that open borders do not mean the abolition of borders, his argument is based on freedom as the absence of interference. From this view, openness is quantitatively measured by the range and scope of the state's interference:

the less states have the capacity to interfere with an individual's decision to move, the freer migrants are. The paradigmatic example of this view is the universal right of free movement within a state, which is the springboard of Carens' (1987) case for the international freedom of movement.

According to Carens (2013, 255), the opposite of open borders is not closed borders but "discretionary control over immigration." Yet, the opposite of discretionary control is not open borders but non-discretionary control. Discretionary control is *qualitative* in the sense that the state has the capacity to interfere in one's decision on a discretionary or arbitrary basis. However, Carens (2013) fails to establish normative criteria to distinguish between non-discretionary and discretionary control, which is crucial for evaluating the justifiability of borders.

As I see it, the range and scope of interference is secondary, but the substance of discretion is of primary importance for a normative argument. Contemporary states are not libertarian watchman states. Rather, they can instigate various policies and programmes to redress social inequalities and prevent domination. Our social freedom and equality cannot be achieved without such a coercive institutional measure. Skinner (2010, 48–49) summarises the neo-Roman tradition of political thought in two slogans: "it is possible to act freely […] if and only if you are a freeman" and "it is possible to live and act as a freeman if and only if you live in a free state." At the same time, the state can also become a primary source of domination when it takes a decision without tracking the interests of those who are interfered by it. This is why we need a democratic system to check and control governmental decisions collectively. In this regard, the argument for open borders based on freedom as non-interference cannot explain what sort of relationship of power is problematic with respect to the freedom of temporary migrants.

It is evident that open borders would reduce the domination of migrants at the hands of the state. Migrants' right to move and settle would at least be entrenched to the extent that no state can interfere with their choices. Yet, such a drastic reduction of state interference might be achieved at the cost of much toleration of domination in other domains. As domestic freedom of movement does not guarantee equal freedom of non-domination for sedentary citizens, the entrenchment of the right to move does not necessarily achieve non-domination. They would become publicly equal but remain socially unequal and, hence, vulnerable to domination.

For non-domination theorists, there is a more positive role for public authorities in realising non-domination through regulating and resourcing actions of individuals and groups. The problem with non-interference is that, in principle, it cannot justify these public interferences since it does not take into account the qualitative differences between justifiable and unjustifiable interference.

I admit that this view of non-interference is somewhat caricatured. Indeed, mainstream liberal theorists have criticised libertarian conceptions of non-interference. There is also an ongoing discussion about whether international freedom of movement amounts to a universal human right. If it does, then the threshold of justification for controlling one's movement becomes stricter. Yet, the point here is that even if open borders can be a possible goal for the future, we cannot end the discussion by only justifying freedom of movement, because it narrows the broader issue of one's freedom into a specific issue about freedom of choice (where to move and settle).

Finally, the non-interference view has no logical connection to democratic justification. As Pettit (2011, 697) argues, the non-interference view is fully compatible with a benevolent autocracy, which is the chief evil from a republican perspective. As non-interference does not necessitate a democratic process of justification, it cannot account for the democratic agency of individuals as directly as non-domination.

If properly constructed, non-domination can escape the shortcomings of the non-interference view. First, non-domination asks how one's freedom is exposed to the threat of arbitrary interference while maintaining a sufficientarian standard for one's common range of choice. Second, beyond protecting and resourcing a certain range of choices, it necessitates a democratic process of justification through which one can act as an active agent of autonomy rather than a mere passive recipient of rights. In these ways, freedom as non-domination is not reducible to negative or positive freedom. While it defines freedom as the absence of a master, it does not require one to be a master of any other persons. Against the positive view, it does not identify the positive and higher ideal one should foster but emphasises the importance of securing sufficient conditions for leading one's life according to one's own plan.

In this way, I find non-domination a plausible concept for discussing freedom of migrants because: (1) it fits the topic better than related concepts, (2) it can shed new light on the social justice and the legitimacy of migration policies in a more coherent way compared to rival conceptions of freedom.

4.1.3 Non-Domination and International Migration

Despite freedom as non-domination's plausibility, mainstream neo-republican scholars, with a few notable exceptions, have been rather silent on the nexus between non-domination and international migration. For instance, Pettit (2012, 94) assumes a social relationship only between "all adult, able-minded, relatively permanent residents." While this includes permanent residents without full citizenship, relationships with those who are not adult, not able-minded, not permanent or not yet born are simply beyond his concern. Because the territorial and generational enjoyment of citizenship is presupposed, it is unclear how the status of temporary migrants, who are non-resident citizens and resident non-citizens at the same time, can be understood in the light of non-domination. This nexus, thus, remains unexplored in the neo-republican literature. Frank Lovett (2018) notes that "the problem of state borders and global migration" is "[p]erhaps the greatest challenge to contemporary civic republican theory."

Certainly, scholars have begun to explore the implications of non-domination for international migration. Meghan Benton (2010, 2014) constructed a "theory of denizenship" based upon a domination-based framework and provides many suggestions about how the vulnerability of immigrants can be reduced in immigration policies. In a similar vein, Marit Hovdal Moan (2014) employs non-domination as a yardstick for assessing the justifiability of partial and gradual inclusion of resident non-citizens. Iseult Honohan (2014) analyses the implication of non-domination for border control, casting a distinct light on the justifiability of migration control that differs from the open border thesis as well as the democratic autonomy thesis. Alex Sager (2012) applies the ideal of non-domination to temporary migrants, arguing that all temporary migrants should be enfranchised regardless of their residential status. Ludvig Beckman and Jonas Rosenberg (2018) explore the link between the democratic boundary problem and non-domination, while from a cosmopolitan republican perspective, James Bohman (2007, 2008) applies and modifies the ideal of non-domination to a more demoi-cratic ideal, underlining the fact that most migrants are deprived of the universal freedom of the "right to begin." David Owen (2014) also explores the transnational implication of non-domination with regard to the problem of non-citizen status.

Yet, these pioneering works still face several limits. Firstly, they mainly focus on the (non-)domination of a specific choice, such as the right of residence or the right to vote, rather than on (non-)domination of migrants as such.[8] Certainly, reducing dependency or arbitrariness in that choice would reduce their overall vulnerability to domination. However, secure or non-dominated residential status does not necessarily imply non-domination *qua* migrants, as citizenship status or permanent residence do not guarantee the full enjoyment of freedom as non-domination. To fully capture the potential of non-domination, we should examine the condition of non-domination of migrants, not the freedom of a particular choice that migrants may have. Secondly, most scholars have focused only on countries of residence, not on countries of origin.[9] However, as we saw in Chapter 2, the commitments of sending countries before and after departure have become more and more important for considering the freedom of migrants. Their freedom as emigrants and immigrants are two sides of the same coin, and their overall freedom *qua* migrants cannot be understood if we analyse one side only. Thirdly, the mainstream scholarship mainly focuses on the *public* relationship between states and migrants rather than the *social* relationships that involve migrants. While these works rightly point out the need for giving a political voice to migrants, they pay less attention to the other equally important condition of non-domination achieved through socio-legal empowerments: non-vitiation.

4.2 VITIATION AND INVASION

Domination is broadly defined as dependence or subjection to a threat of arbitrary power. Lovett (2010, 119) offers a stylised definition: "[p]ersons or groups are subject to domination to the extent that they are dependent on a social relationship in which some other person or group wields arbitrary power over them." Domination is, in short, a *dependency on arbitrary power*. While this conceptual definition is precise, there is a discussion among neo-republican scholars about how to understand the concepts of dependency and arbitrariness.

[8] Owen (2012, 2014) is a notable exception, since he is concerned with the justifiability of migrant status, not rights, from a non-domination perspective. Because his argument mainly concerns the legitimacy dimension, I will discuss his argument in Chapter 6.
[9] On this point as well, Owen's (2012, 2014) argument is an exception.

To construct a robust conception of non-domination applicable to migrants, I begin by exploring what is required for freedom in one or another choice. According to Pettit (2012, 28), "any choice is characterized by a set of options that are available in virtue of the objective and cognitive resources that you can access and use." These options can be hindered or frustrated in two ways: *vitiation* or *invasion*. To understand the difference between vitiation and invasion, assume that you are a would-be Filipino migrant planning to work abroad in a wealthier country, for example, Singapore. Your choice can be hindered if you do not have enough money to go to Singapore. In this case, your option is unavailable: your choice is *vitiated*. Next, suppose that you have enough money to buy a flight ticket. However, you could not apply for the short-term visa, as an officer asks you to pay an illegal brokerage deposit of 10,000 dollars. In this case, your choice is *invaded*; your choice is hindered by the officer's whim. For a choice to be free, one's choice should be not be vitiated or invaded. Your choice to go to Singapore can be secured only when you have sufficient resources to go there (non-vitiation), and no one has a capacity to frustrate your choice on an arbitrary basis (non-invasion).

Non-vitiation means that one's choice is not hindered by any natural or impersonal obstacles. If you cannot walk because your leg is injured, your capacity to walk is vitiated. Non-vitiation in walking means that you can go somewhere if you want to. Non-vitiation, therefore, requires one's functional capabilities over a choice.

Such functional capabilities are related to, but separated from, invasion. Vitiation may occur without intentional actions. Invasion is, in contrast, an inter-personal, intentional, and relational hindrance of one's choice. Non-invasion requires that there is no one who possesses the *capacity* to interfere with your choice on an arbitrary basis. Suppose that the officer decides to issue a visa without fees if an applicant is polite enough. Because he found you polite enough, you luckily got the visa without paying the brokerage fee. Is your freedom hindered?

There are several answers, but the non-domination theorists assume that your freedom of choice is reduced even if your choice is not actually interfered with. Why? Most republicans rely on the primary example of slavery. Suppose that you are a slave, and your benevolent master lets you decide as you wish. Republicans find this situation still dominative insofar as your master possesses the capacity to frustrate your choices. Therefore, non-invasion requires that no one possesses the *capacity* to frustrate your

choice on an arbitrary basis. Domination may occur without actual interference; actual interference may occur without domination.

Non-vitiation and non-invasion constitute necessary and sufficient conditions for non-domination of choice. One's freedom of choice will be hindered either (1) if they are not sufficiently protected and resourced to make a choice, and/or (2) if there is an agent or agency which frustrates their choice on an arbitrary basis.

I have shown how one's freedom of a choice could be reduced by vitiation and invasion. As Pettit (2012, 26) notes, however, republican scholars have traditionally focused on the freedom of persons or citizens, not on the freedom of a particular choice that persons or citizens have. Even when your choice to go to Singapore is not vitiated and invaded as such, it does not mean that you are free. Suppose that you decide to go to Singapore because you cannot find any other way to sustain your household. In this case, even though your choice to move is not hindered, your life plan to work and stay with your family is indeed hindered. As this case shows, to evaluate one's overall freedom, we should take a broader perspective by treating one's freedom of choice as a part of a bundle of choices structured by their connection to one's conception of the good or one's life-plan. Therefore, to reformulate: one is free and not dominated insofar as (1) one is sufficiently protected and resourced to exercise one's functional capability over a suitable range and depth of choices (non-vitiation), *and* (2) no agent or agency has the capacity to hinder one's choice on an arbitrary basis (non-invasion).

4.3 VITIATION AND DEPENDENCE

One's choice can be vitiated if one lacks a sufficient resource or protection to make such a choice. This means that one cannot make your choice just on one's own. The availability of one's choice is dependent upon another's help or support. Therefore, vitiation is a condition of *dependency*. Conversely, non-vitiation requires a certain level of *non-dependency*, under which one can make one's choice without relying on the mercy of another.

Yet, as noted above, one's overall freedom should be measured not by choice but by a bundle of choices tied to one's conception of the good and life plan. The problem is one of defining how extensive a bundle of choice should be. One possible way to delimit the bundle is to focus on correlate choices to basic interests or primary goods. John Rawls

(1999a, 54), for instance, listed five primary goods, which are necessary and conducive for all citizens to pursue their rational life plans, regardless of their specific conception of the good, such as the basic rights and liberties; freedom of movement and free choice among a wide range of occupations; powers of offices and positions of responsibility; income and wealth; and, the social bases of self-respect.

While Rawls (1999a) draws this account of primary goods from his conception of the free and equal citizen, Pettit (2012) proposes a guiding principle for identifying the adequate bundle of choice. For Pettit (2012), each citizen should be sufficiently resourced and protected up to the degree which can pass "the eyeball test." This test is employed as a heuristic tool to identify the "local" standard bundles of choices equally available to each citizen to be a free citizen:

> "The test is grounded in the image of the free citizen – the *liber* or freeman – of republican tradition. It says that people will be adequately resourced and protected in the exercise of their basic liberties to the extent that, absent excessive timidity or the like, they are enabled by the most demanding local standards to look one another in the eye without reason for fear or deference" (Pettit 2012, 103).

Pettit (2012, 103) suggests a list of choices which should be entrenched through resourcing and protection: the freedom to think what you like; the freedom to express what you think; the freedom to practise the religion of your choice; the freedom to associate with those willing to associate with you; the freedom to own certain goods and to trade in their exchange; the freedom to change occupation and employment; the freedom to travel within the society and settle where you want.

Non-vitiation or non-dependence is not the patent of neo-republican theory. As Pettit (2014, 86) concedes, the requirement of non-vitiation has resonance with the capability approach developed by Amartya Sen (1985, 2009), Martha Nussbaum (2000), and others. At this point, John M. Alexander (2008) argues that there are certain similarities and advantages between the capability approach and the republican idea of non-domination:

> "The capability approach and republicanism share the idea that noninterference, although necessary for freedom, is not sufficient to cover those important dimensions of freedom which might require focusing on people's capabilities and conditions of non-domination. […] Moreover, both approaches also believe in the idea that certain qualified (non-arbitrary, nondominating and capability-promoting) forms of interference by the state and law are quite consistent with freedom" (Alexander 2008, 167).

The difference between the capability approach and neo-republicanism is that the latter connects the entrenchment of non-domination with a robust way of democratic justification. While Sen (1985, 2009) and Nusbaum (2000) determine the threshold of sufficiency on substantive grounds, Pettit (2014) aims to find this threshold through democratic engagement.

The non-domination theory also shares many insights with relational egalitarians or sufficientarians, such as Elizabeth Anderson (1999) or Samuel Scheffler (2003).[10] In the former's theory of democratic equality, justice is a relational matter between citizens. For her, guaranteeing equality of capabilities is the key to overcome unequal relations between citizens. As Anderson (1999, 288–89) famously stated, the primary aim of egalitarianism is "not to ensure that everyone gets what they morally deserve, but to create a community in which people stand in relations of equality to others."

However, these sufficientarian ideas inevitably beg the question, especially when dealing with transnational issues like temporary migration. The critical question is where to set the threshold of sufficiency. Does the same threshold of sufficiency equally apply to all individuals despite status difference? Only Nussbaum (2000) philosophically proposes a list of ten basic capabilities protected as human rights. The other accounts assume that there can be a 'local' threshold evaluated through a democratic process. However, while such a local threshold may be sufficient *within* a community of sedentary citizens, it may not be valid *across* communities or people of different status. Nor is it obvious which threshold should be prioritised if there is a huge gap between different communities. Is it justifiable to adopt the sufficiency standard of a sending community, even if it is far below sufficiency in a receiving community?

This is a significant challenge. If we apply the standards for sedentary citizens to non-sedentary migrants, we will notice that the temporary migrants' status cannot satisfy the threshold of sufficiency. Many vital freedoms, such as freedom of movement and employment, are not protected and well-resourced, and it seems that temporary migrants usually face difficulty in looking into the eyes of permanent residents or citizens without fear or deference.

[10] On the similarity between non-domination theory and relational egalitarianism, see Garrau and Labode (2015)

I think that the answer to this question depends upon the process of justification. In other words, it depends on how the decision is taken when setting the threshold of sufficiency and on how people exercised their agency in that process. The baseline argument is that, if there is a significant gap in the sufficiency threshold between sending and receiving countries, the proper threshold should be identified through a transnational democratic process open to all those who are concerned, including temporary migrants.

4.4 INVASION AND ARBITRARY POWER

Non-vitiation requires to guarantee the common set of functioning regardless of one's preference or will. However, the satisfaction of functional capacity is necessary but not sufficient to enjoy freedom as non-domination or fuller freedom because one's choice can still be hindered if someone has a capacity to interfere with it on an arbitrary basis. Therefore, to be able to enjoy non-domination, the two conditions, non-vitiation and non-invasion, should be combined.

Many republicans, including Pettit (2014), find invasion to be a more inimical form of injustice than vitiation. Pettit (2014, 49) cites Kant's words: "Find himself in what condition he will, the human being is dependent on many external things... But what is harder and unnatural than this yoke of necessity is the subjection of one human being under the will of another. No misfortune can be more terrifying to one who is accustomed to freedom."

It is not a mere coincidence that those who are severely deprived of their sufficient capabilities are those who are vulnerable in a social relationship, and those vulnerable in a social relationship are usually those who do not achieve the sufficient threshold of capability. I do not suggest here a kind of lexical order between non-vitiation and non-invasion. If one is not well protected and resourced far below the sufficient threshold, as in the case of absolute poverty, it would be reasonable to prioritise the amelioration of vitiation. However, no one can enjoy freedom as non-domination if he or she is still dependent on another's benevolence or malevolence about his or her satisfaction with their functional capabilities.

Reducing dependency will reduce overall domination. Yet, it does not assure non-domination. A slave who is free to change his master is not dependent on his master, so his overall domination would be less severe than dependent slaves. Yet, however free to

change one to another master, he is vulnerable to domination insofar as there is a master. To be non-dominated, he should be independent in a stronger sense: there should be no master. To have no master means that no one can exercise arbitrary power over you.

What constitutes arbitrary power, then? According to Pettit (1997, 55), "[a]n act is perpetrated on an arbitrary basis […] if it is subject just to the *arbitrium*, the decision or judgement, of the agent; the agent was in a position to choose it or not choose it, at their pleasure." Skinner (2008, 53) explains that "*dominus* or master's power is said to be arbitrary in the sense that it is always open to him to govern his slaves, with impunity, according to his mere *arbitrium*, his own will, and desires." Finally, Lovett (2010, 96) notes that power is usually considered to be arbitrary "when it could be exercised merely according to the 'will or pleasure' of the person or group holding that power."

Broadly understood, arbitrary power is, thus, a power that a human agent exercises merely following his judgement, whim, will, or pleasure over another agent. Certainly, insofar as an exercise of power is intentional, it necessarily involves an agent's judgment. However, the point here is that power is arbitrary if an agent exercises his power over another only by following his unconstrained judgement. To exercise power in a non-arbitrary way, then, the power must be constrained in a certain way. The question is what kind of constraints can merit evaluating a power as non-arbitrary.

The definition of arbitrariness is essential because it is arbitrary power that must be minimised to realise the ideal of non-domination. As Patchen Markell (2008, 13) notes, the "place of the concept of arbitrariness is straightforward: it distinguishes unacceptable from acceptable powers of interference." Lovett (2012, 148) also emphasises that a plausible conception of arbitrariness should play a role in "help[ing] identify instances of domination, and hence the absence of political freedom."

I scrutinise below three existing conceptions of arbitrary power, namely arbitrary power as unconstrained power (Lovett 2010), untracking power (Pettit 1997), and uncontrolled power (Pettit 2012). After reviewing the merits and limits of each conception, I submit my own conception, arbitrary power as uncontestable power. Let me state my conception beforehand: *a power is arbitrary insofar as its exercise is not open to effective contestation from those who are exposed to it.* Before defending my conception, let me review three existing conceptions.

4.4.1 Proceduralism

Lovett (2010; 2012) proposes a procedural conception of arbitrariness. While his definition of domination has been popular among neo-republicans, his conception of arbitrariness remains an outlier. After reviewing his conception in detail, I argue that there is a good reason to reject his procedural account and to favour a more substantive conception.

For Lovett (2012, 139), power is arbitrary insofar as "its exercise is not reliably constrained by effective rules, procedures, or goals that are common knowledge to all persons or groups concerned." As he summarises, in this interpretation, "the more procedurally constrained the exercise of social power is, the less arbitrary it is, and vice versa" (Lovett 2012, 139). He contends that his conception is "proceduralist" in contrast to the "substantivist" conceptions that he criticises. The chief difference between the two is that, in the proceduralist interpretation, the arbitrariness of power is always reduced whenever there are effective and reliable constraints on it. In the substantive interpretation, in contrast, the arbitrariness is reduced when these constraints meet some further substantive requirements (Lovett 2012, Arnold and Harris 2016).

What kinds of procedural constraints can reduce arbitrariness? Lovett (2012, 139) elaborates two conditions for constraints to reduce arbitrariness. Firstly, constraints should be *effective* in the sense that they *actually* constrain the exercises of power. A constraint is not effective if it just appeals to one's internal aspiration or it constrains power merely formally. Effective constraints should be enforced either through actually-observable laws and/or social conventions. Secondly, effective constraints should also be *reliable*, in the sense that the constraints are commonly known to all those who are concerned. Therefore, in his conception, the more the exercise of power is constrained by effective and reliable rules, the less arbitrary it is, and vice-versa.

The main appeal of Lovett's (2012) conception is that it suggests a clear way to reduce arbitrariness. If we can find a gap between our social convention and the scope of some power open to a mere whim of power-agents, we can implement effective and reliable constraints on such power by strengthening our social convention.

However, the procedural account of arbitrariness must confront an odd conclusion. Insofar as constraints are effective and reliable, the procedural conception must be indifferent to their substantive contents (Arnold and Harris 2017; Lazar 2017). What we

should look for is just how the power is constrained by the existing social conventions or laws, not the substantive values or norms behind them.

As Lovett (2012, 141) notes, on this procedural account, a "rigorously legal system of institutionalized discrimination" can be perfectly non-arbitrary insofar as it effectively and reliably constrains the exercises of power conforming to the existing social convention. His examples include Apartheid in South Africa, Jim Crow Laws in the American South, the legal liabilities imposed on European Jews, and so on. Numerous other examples are possible. Most notably, most migration and citizenship laws would exhibit the same non-arbitrary character insofar as the exercise of these powers are constrained in accordance with the social convention, however substantively discriminatory they are.

Many would intuitively find this conclusion uncomfortable. Anticipating it, Lovett (2012, 141) indeed notes that "[e]rgo, our strong initial intuition is that the relevant sense of arbitrariness must be the substantive one." If so, why does he still favour the procedural conception? Why should we stop our inquiry of arbitrariness at the point of effective and reliable, but perhaps neither just nor legitimate, rules?

Lovett's (2012) defence is twofold. The first reason is to maintain the value-neutrality of the concept. Any substantive conceptions would introduce a new subject of disagreement because they must introduce value-loaded or moralised criteria for distinguishing the sorts of constraints which genuinely reduce arbitrariness and those that do not. Only the procedural conception can gain wider acceptance among conflicting moral doctrines because of its supposed value-neutrality. The second reason is that any kind of substantive arbitrariness presupposes some procedural arbitrariness. "Under most conditions, it is crucially important to secure procedural non-domination at least, often before other goods which may depend on it for their ultimate success" (Lovett 2012, 149). Lovett (2012) thus posits his conception as value-neutral and minimalist.

As I will argue, it is true that some substantive conceptions problematically moralise. However, his procedural account is not value-neutral, and his suggestion is wrongheaded. This conception does not value the compromise or interaction among active agents but constrains autonomy by effective and reliable but not just and legitimate rules.

According to Lovett (2012, 149), the proceduralist conception can serve its best role in identifying domination: "[r]egardless of a person's conception of the good, she can appreciate the value of knowing where she stands, and being able to plan out life on that

basis." But what is the value behind only knowing the fact of discrimination and limited capabilities? Arnold and Harris (2017, 61) point out that, by defending this minimal condition, Lovett's conception is no longer proceduralist but "one-value" substantivist: "[b]ecause Lovett's view takes *one particular interest* that people have - namely, their interest in knowing where they stand relative to powerful others - and elevates it above all others, defining power as non-arbitrary insofar as it is forced to track *that one interest*." Lovett (2012) dismisses the value of *claiming* where one stands as an active agent of autonomy. For Lovett (2012), the only moral requirement for a power-holder is just to conform to the existing conventions. In his republic, the relationship between power-holder and power-bearer is only passively mediated through conventions, and no agency is required.

Finally, his conception is ill-suited to deal with the issues of international migration. Most migrants seem not exposed to arbitrary power in the proceduralist sense. As rights and obligations are mostly codified through actually-observable laws, temporary migrants are not vulnerable to domination. It may be possible to claim that powers held by employers, state officials, or majority citizens are still arbitrary in the procedural sense, but the question is what kind of constraints are needed to reduce arbitrariness. While it requires further regulations to reduce existing discretion, it cannot account for the substantive content of discretionary power.

4.4.2 Interest-based Substantivism

The other three conceptions, including mine, can be classified as substantivist, in the sense that they require not only that there are effective rules, procedures, or goals but also that *these constraints meet some further substantive conditions*.

The first substantive conception is offered by Pettit (1997), although he recently modified this conception. In his seminal book, *Republicanism* (Pettit 1997), Pettit proposed a conception which can be labelled *interest-based substantivism*. In this conception, power is arbitrary insofar as its exercise is not reliably constrained by effective rules and procedures that *force* a power-holder *to track the interests* of those exposed to his power.

The substantive condition of this conception is that a power-holder is obliged to track the interests of those exposed to his power. At first sight, this conception seems to fill an

important lacuna of the proceduralist conception. A rigorously discriminatory decision cannot be non-arbitrary because, if decision-makers readily track the interests of those who are discriminated, they cannot justify why such a decision should be taken. Moreover, it also adds a moral requirement for a power-holder not only to conform to the existing rules but also to consider the interests affected by his exercise of power.

What does it mean to 'track interest'? Pettit (1997) is ambiguous in this respect. While Pettit (1997, 55) explains that "an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference," he admits that these interests can be "inconsistent with each other." In that case, he continues, a power-holder should be "at least forced to track *the relevant ones*" (1997, 55). This qualification begs the question: what are the relevant interests?

There are two relevant elements to measure arbitrariness on this conception. First, we may focus on *what* interests are tracked. This is Pettit's position. Secondly, we may examine the condition of *how* interests are tracked, or more specifically, *how* the interests are *forcefully* tracked. As I will argue later, my own conception is close to the latter version of interest-based substantivism. The difference is that I primarily focus on the latter for measuring the arbitrariness and only secondarily on the former.

By focusing on relevant interests, Pettit's (1997) conception has been heavily criticised for introducing a moralised content into a descriptive domain. John Christman (1998, 205) argues that tracking interests is not a sufficient condition to justify interference: "even a robber 'tracks' my interests during a robbery predicting that I have a higher order interest to live whether or not I hold onto my wallet. […] [T]he question is not whether the citizen's interests were taken into account but whether they were taken into account properly and according to just procedures." For Christman (1998, 203), it reveals the hidden premise of non-domination: "the protection of freedom cannot be the most basic principle of justice, since the norms that fix the reference of the concept (the principles that define 'unjust'…) are logically prior to the principle that the state should protect liberty per se." If the interests to be tracked are normatively identified beforehand, the requirement of tracking interests becomes empty because what concerns us here is not the real interests but codified common-avowable interests. In other words, power is not arbitrary if it respects the identified set of common-avowable interests. The error here is that it conflates the concept of non-arbitrariness with common-avowability.

The second problem internal to this conception is that it may justify a wide range of paternalistic interference. Paternalistic interference occurs when one interferes with others, tracking their relevant interests on one's own terms, though not necessarily on theirs. While it might be possible that one's own terms match their terms, it is also likely that their real interests are dismissed even if you conform to the supposedly common interests. The problem here is that, because the interest-based substantivism does not specify the required process of tracking, it cannot problematise the actual gap between the relevant and real interests. Accordingly, the agency exercised in the process of claiming their interests becomes irrelevant to the evaluation of arbitrariness. As a result, the degree of arbitrariness of a decision is solely evaluated to the extent that it conforms to the interests one ought to have, not to those that one actually has. As Patchen Markell (2008, 34) argues, for Pettit, non-arbitrary power is a power which passed through a "legitimating filter," designed to conform to the interests that Pettit has in mind.

These points are valid. First, even though it is stipulated as a minimal requirement, it indeed muddles the central import of the concept of arbitrariness. For our ordinary language use, the initial value judgement of a decision is not on whether it accounts for a common interest but on whether it accounts for the interests of those who are affected by it. Pettit (1997) dismisses the importance of how the decision is justified to a power-bearer. The drawback of this argument is that it is possible for a power-holder to justify his decision only by reference to *what* interests he tracked. The actual interests and complaints of the subjects of his power play no relevant role here.

I think that Pettit's conception can be better employed if we turn our focus from *what* interests are tracked to *how* interests are bindingly tracked. To judge the arbitrariness of a decision, its actual content is of secondary importance, and the justificatory process of decision-making is of primary importance. Hence, the question is more a matter of agency enacted and reacted between those who exercise power and those who subject to it.. My conception – arbitrary power as incontestable power – is the conception that takes this focus seriously.

4.4.3 Control-based Substantivism

In his recent works, Pettit (2012, 2014) no longer defends the interest-based substantivism discussed above. He has even dropped the element of arbitrariness

altogether from the definition of domination. Instead, now he equates arbitrary power with *uncontrolled* power. In this conception, power is arbitrary insofar as its exercise is not *controlled* by those subject to it.

The uncontrolled-power conception is a substantive conception of arbitrariness. It requires not only that there is a set of reliable and effective rules but also that those rules must be controlled by those who are exposed to them. What does this additional element of control mean? Pettit (2012, 56-58) uses an instructive case of a drinks cabinet. Suppose John is a heavy drinker and he resolves to lock his drinks cabinet for 24 hours. However, because John is not confident that he will sticking to his plan, he decides to give the key to his trustworthy neighbour, Brian, to keep it for 24 hours with a clear instruction such as: 'Do not give it back to me even if I ask you within 24 hours.' For Pettit (2012), in this case, even if Brian refuses to return the keys within 24 hours, he does not exercise arbitrary power over John. Certainly, John's choices are restricted for 24 hours. However, the way they are constrained is not objectionable, because Brian's power is controlled on John's terms. Now, suppose a slightly different case. Brian knows John is an alcoholic. Brian decided to lock the cabinet and keep the key for 24 hours for John's good. John finds Brian's decision arbitrary and demands that he returns the key, but Brian refuses to return the key for the good of John's health. Pettit (2012) believes that the second case is problematic because John is exposed to the arbitrary power of Brian whose "alien will" holds sway over him.

The crucial difference between the two cases is the presence or absence of control. The reason why he uses the term "uncontrolled" rather than "arbitrary" is that arbitrariness is now loaded with many "misleading connotations" (Pettit 2012, 58). Against the backdrop of criticisms over the interest-based conception, he now believes that we need to have a conception that offers an agreeable standard for evaluating arbitrariness, which should be "a perfectly descriptive, determinable meaning and people can agree on when it applies and when it does not apply, independently of differences in the values they espouse," and the term "uncontrolled" is offered as "not a value-dependent or moralized term" (Pettit 2012, 58). At this point, he partly accepts the criticisms discussed above.

The advantage of this new conception is that it clearly explains the difference between arbitrary and non-arbitrary power in terms of controlled and uncontrolled power. Pettit (2012, 166-179) argues that there are three distinct requirements by which an act of interference can be adequately controlled and hence non-arbitrary: control should be

suitably *individualised*, *unconditioned,* and *efficacious*. Control is *individualised* if those over whom power is exercised have equal access to the system of influence. Control is *unconditioned* if those persons can influence the decision free from the interference of others. Finally, control is *efficacious* if they can influence the decision-making process unfailingly such that, even if they disagree with a particular decision, they understand it as a matter of "tough luck" on this occasion. As Pettit (2012, 179-80) affirms, these requirements of adequate control make a decision "democratic." In Pettit's democratic conception of arbitrariness, power is not arbitrary if it is constrained by a democratic process of an individualised, unconditioned and efficacious control.

The uncontrolled-power conception avoids some pitfalls of the two previous conceptions. First, unlike Lovett's conception, this conception does not see all kinds of constraint as domination-reducing. A starkly discriminatory law is arbitrary because it cannot meet the three requirements of popular control. Second, in contrast to interest-based substantivism, it provides a clear way to force a power-holder to track the interests of those subject to his power.

However, the control-based conception has some shortcomings as well. The proposed threshold of adequate control is too high for evaluating arbitrariness in different domains. His three requirements are primarily applied to the public relationship between citizens and states. However, being internal to his conception, it is not clear what implication they have if applied to other domains, such as family, workplace, market, civil society, and so on. If the best way to reduce arbitrariness is to give individuals control, we should democratise all the varieties of problematic power relationship regardless of the domains where they occur.

Consider a case of employer domination. Should a firm be democratised in such a way that employees can democratically control the power of the employer? It should be, of course, if we want to maintain conceptual consistency. Indeed, this argument has been advanced by so-called 'workplace republicans,' who deem it necessary to give voice and control to workers against employer domination (Hsieh 2005; González-Ricoy 2014; Breen 2015). Yet, Pettit (2006; 2007) does not take this line. On the contrary, he argues that, if properly regulated, the right of exit backed up by an unconditional basic income would suffice to counter employer domination. In other words, he thinks that collective control is not necessary for countering societal or private domination. The implication

here is that while democratic control might be a plausible way to reduce arbitrariness, it is not necessary to ensure the non-arbitrariness because exit might be enough.

It is compelling that Pettit (2012, 2014) has turned his focus from the question of *which* interests are hindered by power to that of *how* power is controlled. The error is his conflation of democratic control and non-arbitrariness. Democratic control is neither sufficient nor necessary to make power non-arbitrary, which is indirectly affirmed by Pettit himself. The point here is that democratic control is one way – but not the only way – to counter arbitrary power in all its variety.

4.4.4 Contestation-based Substantivism

My own conception of arbitrariness is that power is arbitrary insofar as it is *uncontestable*. My account relies on a substantive conception of arbitrariness. However, this conception parts company with the other two substantive conceptions in three respects.

Firstly, this conception focuses not on how a dominant agent tracks the interests of those over whom he exercises power, but on how they may exercise their agency in such a way as to force the dominant agent to track their interests. The flaw in interest-based substantivism is that, while it rightly underlines the need of agencies of a power-bearer to compel a power-holder to track a subject's interests, it does not specify what kinds of agency should be enjoyed by those subject to the exercise power. Control-based substantivism, in contrast, stipulates individualised, unconditioned, and efficacious control as a way to exercise such agency. However, Pettit (2012)'s criterion completely overlaps with the idea of democratic self-rule.

Secondly, in this respect, Pettit (2012)'s notion of control captures only one way in which agency can be exercised. The problem of the interest-based conception is that it is difficult to evaluate the process of tracking descriptively. From the perspective of those who are subject to 'arbitrary' power, the claims made by a dominant agent that he took their interests into account offers no guarantee of non-arbitrariness. When a child is crying, one tries to stop him crying by removing the cause of his pain. He may cry because he got a thorn in his foot. It is not relevant whether you warned him not to run in the grass barefoot. What is relevant is that the child can get his voice heard by crying. By hearing a child cry, an adult is 'incentivised' or even compelled to track his interest and remove the thorn.

Does my conception escape the criticism of moralisation? I say that it does because the relevant contestatory opportunities may be evaluated on both a quantitative and qualitative basis. Quantitatively, we can list the possible channels of contestation relevant to a social relationship. Qualitatively, we can categorise the possible modes of contestation.[11]

Like the control-based conception, the contestation-based conception focuses on the process of power. The problem with the former conception is that it focuses too sharply on a specific type of control. I think, in contrast, that individualised, unconditioned, and efficacious control is only one way in which contestations are institutionally arranged. Indeed, as I will argue in Chapter 6, these three conditions are appropriate for constitutional matters such as defining the character of citizenship or community.

Finally, unlike the procedural conception, my conception has an answer for the problem of institutionalised discrimination, which occurs when the possibility of a contestatory voice is rejected and invalidated. However well-known the public conception is, and however non-discretionary the rules are, all rules should be open to contestations such that rule-makers are forced to track the interests of those concerned. Maynor (2003) argues a similar point: "The key to determining what is arbitrary centers on whether or not the interfering agent consulted and tracked the opinions or interests of the agent subjected to the interference. For an act to be non-arbitrary, the onus is on the interfering agent to seek actively the opinions or interests of others before acting [...] Thus, existing hierarchies of power can be undermined by forcing them to account for and track the interests of those they dominate through the processes and institutions of democratic contestation" (Maynor 2003, 137).

Three clarifications are in order. Firstly, the requirement that any power should be open to contestation should not be understood as morally obliging individuals to raise contestations. Decisions or rules which are not contested can hold a *prima facie* legitimacy insofar as contestation is open to those concerned. As Ian Shapiro (2016, 334) notes, a theory of non-domination is a "reactive ideal," which "appeals to human ingenuity to design and implement practices that can ameliorate sources of domination as and when they arise. As a result, it always operates at the margin – eschewing the project of designing a basic structure for society as a whole."

[11] For a typology and the comparative merits of contestatory mechanisms, see Chapter 6.

Secondly, contestation does not mean veto power and does not necessarily lead to any substantial changes in substantive outcomes. The core value of contestation is to *force* a decision-maker to provide an adequate reason to justify their decision to those who subject to their decision and to reconsider the validity and justifiability of their decision. However, to have the opportunity to contest a decision does not mean that one is a decision-maker. Insofar as decision-makers can justify their decisions with regard to those subjected to its effects, the exercised powers can be considered as less arbitrary, if not non-arbitrary.

Thirdly, my conception is not a counsel of perfection; in other words, it does not aim to eliminate the arbitrary exercise of power but rather aims to minimise arbitrariness. No exercise of power can be fully non-arbitrary, as it always involves a claim. Any claim is contestable and contested insofar as it is a claim. If one is a manager of a firm, one's reform plan may be accepted by some but may be contested by others. No power claim can be free from potential contestation by those who are affected, and the level of arbitrariness can be assessed by the degree of acceptance and contestation. This amounts to a performative assessment of power. It is not possible for power-holders to *make* their exercise of power purely non-arbitrary; what they can do is to *claim* that their power is exercised in a non-arbitrary way, and the validity of this claim is tested and checked through an interactive process of contestation. We can say that a claim becomes less arbitrary, if it is subjected to contestation.

The contestation-based substantivism has some resonance with the contractualist belief of "reasonable rejection": "[a]n act is wrong if its performance under the circumstances would be disallowed by any set of principles for the general regulation of behaviour that no one could reasonably reject as a basis for informed, unforced, general agreement" (Scanlon 2000, 153). The key point is that, like contracturalism, contestable power theory does not try to specify directly what is non-arbitrary but indirectly defines non-arbitrariness as something which allows for reasonable contestation. Even though an employer aims to respect the best interests of employees, his claim holds prima-facie validity only. If employees believe that his decision does not track their real interests, they should have a chance to make a contestatory claim against their employer's decision.

Now we are ready to synthesise our conception of freedom as non-domination: an agent is free and thus not dominated to the extent that (1) they are sufficiently protected and resourced to exercise their functional capability over the common range and depth of

choices (non-vitiation), *and* (2) they are empowered to exercise their contestatory voice if any agent or agency has the capacity to hinder their choice (non-invasion).

The above formulation signifies not only how one's overall vulnerability to domination may be measured, but also how we can mitigate or minimise it. In terms of measurement, we can depict the sufficient threshold of the common range and depth of choices and measure how individuals can exercise their choices conjunctively. At the same time, we can assess whether there are some agents or agencies which may hinder them from carrying out their choice and the degree to which they can contest these decisions. In turn, to mitigate the risk of domination, we can either ensure they are resourced to the threshold of sufficiency and/or empower them to effectively contest decision taken about, but not by, them.

4.5 MIGRANTS AND NON-DOMINATION

In this section, I apply this conception to consider the condition of freedom of migrants whose membership is divided between two different sovereign states. Applying domination framework to international migrants involves two additional considerations.

Firstly, while the dominant theory of non-domination applies the degree of domination only with respect to their host states, it situates the locus of dependence and contestability on choices that span two territorially independent states. As I will make a detailed analysis in the next chapter, for now it suffices to say that one's overall dependence and contestability cannot be accounted for if treat one's social relationship as located in a single state.

Secondly, as the sufficientarian thresholds of migrants' basic bundles of rights are differently structured, it is not easy to deduce what capabilities are to be protected and resourced across states. Not only are their political rights restricted, the civil rights in the receiving country, such as the right to residence and employment, are uncertain in the case of international migrants. Because it is difficult to pinpoint their basic set of entitlements, for now, at least, I leave open the question of where to set the minimal threshold of non-vitiation. Yet, as I will argue in the next chapter, even if we cannot set the minimum threshold on a theoretical basis, my 'bi-local' account underlines the need of setting such threshold in a clear and transparent way and, once met, a case may be made

that migrants are entitled to enjoy their freedom regardless of their residential status or life plans.

Therefore, I formulate the conceptual framework of domination applicable to migrants as follows:

> *Migrants are vulnerable to domination to the extent that they are not sufficiently protected and resourced (1) to exercise functional capabilities over a suitable range of choices, and/or (2) to raise contestatory voice if they are exposed to any invading powers under the intergovernmental structure of states.*

What my conception of non-domination problematises is the complex relationship of power over the freedom of those whose membership is divided between two countries. It does not advocate opening borders, but requires examination of how peoples' lives are exposed to the arbitrary power of another where borders are relatively open. The non-dominative border, so to speak, may overlap with open borders in some respects. As in the EU, states may agree on opening their borders to each other. However, this opening does not mean that non-domination is assured for sedentary citizens, let alone temporary migrants. Many ancillary questions remain open. How should the welfare spending on migrants be distributed among states? Should sending and receiving countries assist the return of migrants if it is impossible for migrants to do it on their own accord? Is it legitimate to admit migrants without a secure path to permanent residence and citizenship? Should family reunification be permitted for temporary migrants? To what extent should sending countries intervene in decisions of a receiving country impacting their external citizens? Are there any limits? How can we better represent migrants' interests? These questions force us to consider the triangular jurisdictional relationship between migrants and states, which I will resolve in the following two chapters.

Having outlined how the vulnerability of migrants to domination is understood, I should ask why sending or receiving countries should aim at reducing their domination. At first sight, this requirement is straightforward because neo-republicans posit the minimisation of domination as the primary value of political justice. However, as many neo-republicans consider sedentary citizenship as the cornerstone of non-domination, it is still unclear whether the domination of migrants ought to be reduced, or if it has a political salience equal to sedentary citizens. I argue that a concern for migrants' non-domination should be equally attended to by both sending and receiving countries.

Neo-republicans consider the value of non-domination as *a common good*, which should be shared by all members of an association. The question is the scope of 'who' should be considered as a member. On a conventional reading, it corresponds to status citizens. Pettit (1997, vii) connotes the value of non-domination as the "equivalent of citizenship." However, to limit the scope of 'who' to status citizens is problematic.

If non-domination is a collective and common good only for status citizens, it may allow for significant levels of domination of status non-citizens. Of course, entrenching non-domination of citizens does not automatically translate into the entrenchment of non-citizens' domination. However, unless the complementary arguments or principles are provided, it cannot deal with the problem of external domination carried out by the very same set of individuals over others. At this point, most republicans affirm that no individual citizen can enable non-domination for the sake of other individuals' domination. According to James Bohman (2012), there is a dilemma for neo-republicans who seek to circumscribe the scope of non-domination within a national polity: "to the extent that it is nationalist it cannot minimize domination; to the extent that it minimizes domination for all those who suffer injustice, it cannot be nationalist" (Bohman 2012, 109). Therefore, reducing the domination of non-citizens is necessary for creating a non-dominative society. Otherwise, non-domination cannot be claimed as a common value.

From this perspective, the normative goal is not open borders but non-dominative borders, through which people are free from the arbitrary decision of another while being bound not to dominate others. Therefore, my view of an ideal border is not characterised as open. Instead, it is a border specifically designed to prevent the domination of all. While non-dominative borders may coincide with open borders in certain respects, their ends are different. A world of open borders is a world where individuals can move freely without any state intervention. The world of non-dominative borders is the world where individuals are protected and resourced to carry out their life plan without fearing arbitrary interferences. What is not permitted is arbitrary interference, not interference *per se*. Minimising arbitrariness in migration governance is, in essence, the core of justice in migration.

4.6 CONCLUSION

This chapter critically analysed and reformulated the neo-republican concept of freedom as non-domination. I argued that non-domination is a plausible concept for discussing the issues of international migration, not only because of its better conceptual fit when compared to other concepts, but also because it can shed new light on the analysis of justice and legitimacy of migration policies in comparison to other conceptions of freedom such as democratic autonomy and non-interference.

I have constructed a theoretical account of freedom applicable to temporary migrants. The next task is twofold. First, what is the suitable range and depth of choices temporary migrants could enjoy in proportion to their life plan? This question enquires about the relationship between migrants and non-vitiation. It is concerned with the problem of justice, in Pettit's terminology. Second, how might temporary migrants enjoy the condition of non-invasion? This question considers the relationship between migrants and non-invasion, investigating the problem of legitimacy under the intergovernmental structure of states. These two questions will be explored in Chapter 5 and 6, respectively. Non-domination requires, in short, not only that migrants should be protected and resourced so as to enjoy functional capability over a suitable range and depth of choices, but also that no one has a capacity to interfere with their choices on an arbitrary basis. To create the institutional structures that guarantee the non-dominated status of migrants, our theory should include within its purview both receiving and sending countries.

Chapter 5: Justice in Temporary Migration

INTRODUCTION

This chapter and the next chapter address the vulnerability of temporary migrants to domination from two different angles: justice and legitimacy. This chapter concerns the problem of social justice in temporary migration. The political legitimacy of migration and citizenship policies will be explored in the next chapter. Pettit (2012) distinguishes the concerns of justice and legitimacy: "justice" concerns "a feature of the social order imposed by a state," whereas "legitimacy" is "a feature of how it is imposed."

A just state might not be legitimate, and a legitimate state might not be just. The former case is a benevolent dictatorship that imposes just rules without having been authorised to rule by the members of the polity through a democratic process: one's freedom of choice is not vitiated but vulnerable to public invasion. The latter case is a 'mobocracy' that legitimately imposes unjust rules: one's freedom of choice is vitiated but not vulnerable to public invasion. The just and legitimate state, on this view, is a state which imposes a just social order through a proper legitimation process. Only under the just and legitimate state can individuals enjoy a common range and sufficient depth of freedom as non-domination.

If we locate the agency of migrants under the intergovernmental structure of states, it suggests that only in just and legitimate states can migrants enjoy a suitable range and depth of choices. I also noted that the range and depth of choices which migrants enjoy should be different from those of sedentary citizens. The task of this chapter is thus to explore such range and depth of choices for individuals to pursue their "temporary migration projects" (Ottonelli and Torresi 2012, hereafter TMPs). What degree of protection and resources must states allocate to migrants to satisfy the demand for migration justice? Where should we set a threshold of sufficiency for temporary migrants to carry out their life plans without fear or deference?

In the first section, I argue that there are two principal ways to reduce societal dominations: voice-based empowerment and exit-based empowerment. In the second and third sections, I outline how temporary migrants' capabilities can be protected and resourced to carry out their life plans without fear or deference, distinguishing the

emigration and immigration aspects of TMPs. The fourth section considers the correct approach for cases in which intentionally temporary migrants become intentionally permanent. I claim that we should accommodate the possible changes to and updates of their life plans, which require states to adopt some remedial measures for counting their "political time" (Cohen 2018). To summarise, I argue that temporary migration programmes are just to the extent that both sending and receiving countries sufficiently protect and resource temporary migrants to carry out their migratory projects, while fairly accommodating its possible changes.

5.1 TWO WAYS OF SOCIAL EMPOWERMENTS

If TMPs deserve equal concern and respect, the imperative of non-domination requires states to commit to reducing or minimising societal domination between private individuals. In this section, I argue that there are two primary ways to do so: exit-based empowerment and voice-based empowerment. First, the state may empower individuals to *exit* from that relationship. Second, a state may empower individuals to *contest* or raise their voice against the private power that the dominant agent holds. I argue that while voice and exit are both important ways of empowerment, exit-based empowerment should be prioritised as a means to combat societal domination. However, this does not mean discrediting the need of voice because the possibility and credibility of voice usually hinges upon the availability of exit. In other words, exit not only empowers individuals directly when making their independent choices, but empowers them also indirectly to raise their contestatory voices in the private sphere.

From a neo-republican perspective, there are many types of societal domination or *dominium* which should be minimised in a society — for instance, the societal domination between men and women, cultural majority and minority, parents and children, workers and employers, and so on. A republican theory of justice requires the state or central authority to minimise societal domination, on the one hand, and to enable individuals to shape and contest a government's behaviour to prevent public domination or *imperium*, on the other hand.

When one is threatened by the arbitrary interferences of others, he may emancipate himself from domination either through voice or exit. When choosing the voice option, he

contests what the dominating agent does and thus changes an asymmetrical and dependent relationship. On the other hand, when he chooses the exit option, he cuts off the dominative relationship altogether and hence becomes free from the arbitrary interference of others. In this way, voice and exit are the primary means to achieve non-domination. To understand the differences between the two ways of empowerment, I discuss how migrants can be empowered through either exit and voice in the two cases where they are dominated by brokers and employers.

Brokerage domination is common for many temporary migrants. To apply for temporary migration programs, migrants usually pay an excessive amount of money to a recruiter. Consider if this is the only way to apply for a temporary migration programme. In this case, their choices are vulnerable to both vitiation and invasion. First, their choices can be vitiated in the sense that they do not have the option not to pay the excessive brokerage fee to work abroad. Second, their choices are vulnerable to invasion in the sense that they are not sufficiently empowered to contest a broker's decision. The second case is employer domination. Temporary migrants are often vulnerable to employer domination. First, if their residence permit is tied to a specific employer or a sector, they cannot exit from the dominative workplace without risking their legal residence. Second, their choices are usually invaded because they cannot contest the discretion of an employer.

The two cases are common problems that temporary migrants usually face before and after their departure. If a government tries to empower temporary migrants through exit, it has to protect and resource individuals so that they can exit from a dominative relationship. In the case of brokerage, for instance, a government may try to regulate the recruitment business so that it cannot impose excessive costs for job applications, or promote market-based competition among recruiters through which temporary migrants become able to choose a better recruiter. Alternatively, the government may ban the recruitment business altogether and establish an official channel through which temporary migrants apply for various programmes for a reasonable fee. In the case of employer domination, the receiving country may entrench the freedom of choice of employment through which temporary migrants acquire the right to choose and change a specific employer without risking their right of residence.

Voice-based empowerment, on the other hand, involves the direct empowerment of voice through government regulations or public funding for organisations which enable

migrants to raise their voice. Voice-based empowerment for brokerage can be achieved through public surveillance in such a way that the recruitment business is monitored and checked to reflect the collective voice of would-be applicants. For employer domination, the government may oblige firms to represent migrants' voices by requiring employers to include their representatives at board meetings or to enable them to join a trade union.

The means of empowerment needed to counter an identified societal domination depends on context. However, many neo-republicans, including Pettit and Lovett, find exit-based empowerment preferable to voice-based empowerment. To take the case of employer domination, Pettit (2006; 2007)and Lovett (2009) argue that the right to exit backed up by unconditional basic income and competitive markets is the most plausible way of combatting employer domination over employees. Why? Because in the case of societal domination, voice-based empowerment usually involves a higher level of state interferences with social relationships. Voice-based empowerment may reduce the risk of societal domination but may amplify the intensity of political domination if the government decisions themselves are not legitimised adequately through a democratic process.

This risk of public domination thus provides the reason why exit-based empowerment plays an indispensable role in addressing societal domination. The priority of exit in societal domination is well captured by leading neo-republican scholars. For instance, Pettit (2006, 2007) argues that to deal with market inequality, the effective right of exit backed up by an unconditional basic income and competitive markets is sufficient. Lovett (2009) proposes abolishing labour protection laws. While so-called workplace republicans regard these exit-centred policies as inadequate and defective in tackling market inequality, it should be underlined that even for those who advocate the further voice of workers, all agree that the effective right of exit is the precondition for non-domination in the workplace (Hsieh 2005; González-Ricoy 2014; Breen 2015).

In fact, voice alone does not guarantee sufficient levels of non-arbitrariness if it is exercised without the option of exit. When a woman feels dominated in a marital relationship, a kind husband may listen to his wife's concerns and thereby convert their relationship into a symmetrical and fairer one. However, an abusive husband may also neglect and dismiss her concerns and may keep the dominative relationship intact. This possibility is even greater if divorce is legally prohibited. In this case, the ultimate guarantee for getting a husband to track his wife's interest is to give the wife the power

to divorce and exit from her relationship; otherwise, the husband retains his capacity of arbitrary interference. It should be noted that the exit options for temporary migrants also have a contestatory effect. If temporary migrants do not have a right to exit or are unable to exercise it, the employer will wield significant power over them. Yet, if they may exit and the employer perceives this as a credible possibility, this indeed strengthens their contestation power.

In his recent book, *Exit Left*, Robert Taylor (2017) makes a convincing case for exit-based empowerment and its implications for voice. Taylor reappraises Albert Hirschman's thesis about voice and exit in the light of republican freedom as non-domination.

The argument that there is a tension between exit and voice is familiar from Albert Hirschman's work: "[t]he presence of the exit alternative can […] tend to atrophy the development of the art of voice" (Hirschman 1970, 43). When exit is easily available, consumers or members prefer exit rather than voice because this saves them effort and time. Hirschman (1970) argues that this collective choice often risks undermining voice because the most resourced and influential members who can raise their voice are often those who exit first. For him, there are many examples that show this relationship between exit and voice. To take one painful example, the exit of black middle-class families from public education in the U.S. negatively affected the voice of impoverished blacks whose children were left behind in lower quality public schools. Thus, in a later essay, Hirschman (1992) came to assert the simple "seesaw" pattern or "hydraulic" model of exit and voice: "deterioration generates the pressure of discontent, which will be channelled into voice or exit; the more pressure escapes through exit, the less is available to foment voice" (Hirschman 1992, 175). Therefore, it seems that we need to make a 'choice' between voice and exit.

However, at the same time, it is interesting to recall that Hirschman (1992, 79) treated exit and voice as "two basic, complementary ingredients of democratic freedom." While we have to be alert about its potential negative effects on voice, exit can be an important or even essential path to democratic freedom. If certain conditions are met, exit may strengthen voice and vice-versa. For a rather harmonious relationship between exit and voice, Hirschman hints at the following condition:

> The chances for voice to function effectively as a recuperation mechanism are appreciably strengthened if voice is backed up by the threat of exit, whether it is made openly or whether the possibility of exit is merely well understood to be an element in the situation by all concerned […] *the effectiveness of the voice mechanism is strengthened by the possibility of exit* […] *the threat of exit must be credible, particularly when it most counts* (emphasis added, Hirschman 1970, 82-83).

Robert Taylor (2017)'s contribution lies in his re-interpretation of this Hirschman's 'hidden' thesis. If exit is just a *formal* option, it would leave the least advantaged vulnerable to domination because the most advantaged and powerful will exit in the short run, and the dominative agents may not be motivated to listen to the voices of the vulnerable (Hirschman's first thesis). However, if the vulnerable are well equipped and resourced to exit, the chance of exit renders their voice more effective (Hirschman's second thesis). Resourced exit for the vulnerable thus not only empower them *directly* to make their independent choice, but also *indirectly* strengthens their voices because their threat of exit creates a substantial incentive for a dominative agent to be responsive to their interests. Therefore, Taylor (2017, 19) argues that "exit can act as a complement to voice, giving vulnerable citizens a persuasive means to sway and even check the exercise of arbitrary power […] and failing this, it can provide a substitute for voice, offering a means of escape from such power, if only it is properly resourced."

Mark Warren (2011) also scrutinise the democratic implications of exit-based empowerments. He distinguishes between two forms of exits, which can be constructed by social and political authorities. The first form is *enabled* exit, through which individuals can make choices to leave or stay with an employer, an association or organisation, or other kinds of social relations. If exit is properly enabled by protection and resourcing through various policies, it serves to reduce domination because it entrenches and strengthens one's capacity to make voluntary and independent choices. The second form is *institutionalised* exit, in which individual decisions of exit are organised within an institution, such as competitive party electoral systems. For Warren (2011), institutionalised exit is important especially when monopolies are natural (e.g. the sovereign state). Even though it is not always easy to exit from the monopolistic power of a state, institutionalised exit helps to re-organise this monopoly by introducing choices within a monopolistic institution. Exit is usually considered as silence, in contrast to the act of voice. However, Warren (2011) argues that "[a]lthough the act of exit may combine

with voice, the act *in itself* constitutes a mode of communication—a signal—even when not combined with voice" (Warren 2011, 695). While the act of exit itself does not convey linguistic content, it *signals* dissatisfactions or opinions to which policy-makers are incentivised to be attentive. In this way, exit-based empowerment can serve both non-domination and democratic voice.

Therefore, exit-based empowerment does not diminish the need for voice. Instead, the resourced and institutionalised exit not only *directly* empowers one's functional capability but also *indirectly* strengthens one's ability to raise one's voice against a dominative agent.

5.2 JUSTICE IN TEMPORARY EMIGRATION

I have argued the case for exit-based empowerment and its possible positive relationship with voice in reducing societal domination. The following two sections outline how temporary migrants' capacity can be protected and resourced up to where they can pass the "eyeball test" (Pettit 2012) *qua* temporary migrants. I distinguish two aspects of TMPs: temporary immigration projects (TIPs) and temporary emigration projects (TEPs). I similarly distinguish two aspects of permanent migration projects (PMPs) between permanent immigration projects (PIPs) and permanent emigration projects (PEPs). Why should we distinguish the immigration and emigration side of migration projects? This is necessary because the success of migration projects depends upon the coordination between sending and receiving countries, and the duties of each country differ. At the same time, insofar as every state holds immigrants and emigrants within and beyond its jurisdiction, its internal and external duties are closely related to one another.

With what protections and resources should sending countries provide (would-be) temporary migrants? Any migratory decision presupposes that there is a possibility to exit their state of residence, including their home state. If the sending country does not permit its citizens to leave or imposes high costs of exit, its citizens' only option is to leave illegally or irregularly. Since the legality of international movement hinges on its channelling through regular migration routes, the role of sending countries should not be dismissed in addressing the issues of temporary migration. Moreover, beyond protecting their citizens' rights to exit, sending countries should also support and resource their

pursuit of their TEPs. I argue below that such commitments are necessary in three areas in order to minimise the social domination of temporary migrants.

5.2.1 Protection of Human Rights

The first area is the protection of human rights of temporary migrants abroad. The right to exit is already entrenched in the list of the universal human rights. Article 13 of *the Universal Declaration of Human Rights* stipulates that "a citizen of a state in which that citizen is present has the liberty to travel, reside in, and/or work in any part of the state where one pleases within the limits of respect for the liberty and rights of others" and that "a citizen also has the right to leave any country, including his or her own, and to return to his or her country at any time." The protection of the right of exit requires not only the legal entrenchment of the right to move, but also various forms of institutional support and resources. For instance, states should provide the institutional and material infrastructures, such as safe route of transportations and flights, visa-free agreements, and so on. Moreover, insofar as individuals hold status citizenship, sending states bear some protection duties, such as consular and diplomatic protection.

Sending countries can also expand legal routes of temporary migration by signing bilateral or multilateral treaties or agreements, which not only buttress better right protections overseas but also broaden the available choices for temporary migrants.

Furthermore, the adoption of constitutional guarantees and statutory frameworks facilitates the protection of migrant workers abroad. For instance, the Philippines constitutionally stipulate comprehensive rights of emigrants in the *Migrant Workers and Overseas Filipinos Act of 1995* (Republic Act NO. 8042). In 2008, a constitutional amendment in Ecuador introduced the concept of "universal citizenship," granting citizens rights independent of their territorial locations. In accordance with this principle, the Ecuadorian government has actively engaged with the Ecuadorian diaspora and promoted such policy on the international stage (Góngora Mera, Herrera, and Müller 2014).

As Robyn Magalit Rodrigues (2010) argues, even for major sending countries such as the Philippines, these external protections face the problem of extraterritorial implementation and are sometimes betrayed by policy and diplomatic preferences.

However, it is still significant that the rights of emigrants are now constitutionally entrenched in several sending countries.

5.2.2 Reducing Migration Costs

The crucial area where sending countries must do more is the reduction of migration costs. Migration costs refer to not only the material and cognitive costs incurred for migrants to leave from their sending countries but also to the costs to exit from their destination countries. Reducing migration costs helps to reduce the dependency of (would-be) temporary migrants before and after departure. Before departure, if would-be migrants do not risk paying fees for leaving and applying for working abroad, they will become less dependent on recruiters' power. After departure, the exit costs from dominative relationship with their employers in a host state is also reduced, because migrants do not need to pay the debt back and spend their earnings and savings according to their plan.

A reduction of migration costs can be achieved in various ways. For example, language and vocational trainings before departure give temporary migrants chances to acquire and develop the necessary skills for temporary migration. Providing information and knowledge about the destination countries would help migrants to deliberate better on the feasibility of their life plan and help them avoid becoming victims of exploitative traffickers or recruiters.

Apart from these educational and developmental supports, the crucial area regarding the exit costs is the regulation of brokerage or recruitment business. It is reported that many temporary migrants, especially lower-skilled migrant workers, often pay an excessive brokerage fee to recruiters in sending countries. Comparing migration costs between South-East Asian countries and GCC states, Philip Martin (2017) argues that there is a huge difference depending on the "corridor" of migration. The median costs of migration were lowest in the corridor between Philippines and Qatar (400 USD), and highest in that between Pakistan and Saudi Arabia (4,000 USD), which amounts to a difference of 1:10 (Martin 2017, 92-93).

As Martin (2017, Chapter 6 and 7) argues, such brokerage differences can be explained by how the recruiting businesses are regulated in their home countries. The question is how the brokerage business can be regulated. Most international conventions and agencies advocate the elimination of private recruiters in order to minimise migration

costs through government regulation. For example, Article 7 of the ILO's Private Employment Agencies Convention (ratified in 1994) states that "[p]rivate employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." However, despite the UN and ILO's strong preference for no recruitment costs, many sending countries face difficulties in enforcing such regulations.

According to Martin (2017, 130-133), there are three main ways to regulate recruitment business. First, governments may outlaw private recruitment business and impose penalties on private recruiters that trespass such rules. Second, governments may develop an incentive system to induce recruiters to comply with the rules. Third, governments may launch public agencies that compete with private agencies or monopolise the recruitment business.

For Martin (2017, 135-141), the first, penalising strategy often fails because (1) it is difficult for inspectors to check and monitor all private agencies, most of which are small, (2) migrants often withdraw their complaints once they obtain employment abroad, and (3) a process of investigation and hearing of a complaint takes time and involve locational costs that induce applicants not to complain. Importantly, this argument shows the limitation of voice-based empowerment in dealing with societal domination of brokerage.

Martin (2017) argues that the second and third strategies provide a promising avenue to reduce migration costs. The second strategy, incentive systems, is composed of offering economic incentives to induce recruiters to comply with migrant protective rules, such as lower processing costs, tax breaks, and awards. This strategy can be interpreted as a case of *enabled exit* because it fosters fair competitions among recruiters and provides would-be migrants with an enhanced chance to choose a better recruiter.

The third strategy, which is often advocated by ILO, has led to several 'good practices' in reducing migration costs. For instance, working closely with ILO and East-Asian sending countries, the Korean Employment Permit System (EPS), introduced in 2003, has dramatically reduced migration costs. Under the EPS, the whole application process is governed monopolistically by government agencies. According to a survey in 2013, the EPS workers paid 925 USD on average for pre-departure language training and a flight ticket to Korea, which is much lower than the 3,500 USD to 5,000 USD paid for applying for the previous Industrial Trainee System (Park 2016). This strategy should be understood as a case of *institutionalised exit*, in which migrants' choices are organised within the intergovernmental channel. Importantly, by tying government agencies

through bilateral agreements, it incentivises government officials to be attentive to their choices and opinions.

Which strategies should be taken to reduce the migration costs depends on the relevant context. On the one hand, the second strategy is more flexible than the third. When the migration routes are dispersed and controlled by many private recruiters, it would be wiser to introduce market-based incentives instead of banning all private agencies. On the other hand, the advantage of a government-monopoly system is that it clarifies governmental responsibility.

5.2.3 Supporting and Insuring Temporary Migrants Abroad

If the substantive costs for temporary migration abroad are sufficiently reduced, temporary migrants are less vulnerable to societal domination. I also underlined why reducing the pre-departure costs also enables exit from employer domination in the host state. In this section, I argue that sending countries can also address the vulnerability of temporary migrants after departure.

There are various measures that may be taken to reduce the dependence of temporary migrants after departure such as the portability of social benefits, special funds for expatriates, remittance supports, and repatriation and re-integration policies.

The portability of social benefits and security or the continued coverage in the social security of sending countries would allow temporary migrants to receive benefits even after their return. An example is an agreement between India and Belgium in 2009 in which Indian temporary workers (maximum five years) in Belgium are covered by the Indian social security system, and their contributions are paid to the Indian system (Tiwari, Ghei, and Goel 2017). While such measures are often taken through bilateral or multilateral agreements, a growing number of sending countries take unilateral steps by permitting continued contributions and coverage on a voluntary basis.

Major sending countries such as the Philippines, Mexico, India and Sri Lanka, have established special funds to help migrant workers abroad and their families. For example, the Philippines established a two-tiered social security system for migrant workers abroad. Under the Social Security System (SSS), Filipino workers abroad are eligible for the Basic Pension Program upon their contribution, which provides the same coverage

available to domestic workers, and benefit from a Flexi-Fund Program, a migrant-exclusive fund for a supplementary pension.

Some sending countries have developed measures to facilitate and maximise remittances. The most prominent measure is Mexico's *Tres Por Uno* programme, which channels parts of remittances sent by Mexicans abroad into public projects that directly benefit their home communities in Mexico. This programme is jointly implemented by expatriate associations, the state and municipal governments, and the Federal Government. For every peso sent by migrants via this program, the Federal, state and municipal governments contribute the same amount to a jointly-owned bank account. Therefore, if a migrant sends 1,000 pesos, Mexican authorities will contribute 3,000 pesos in total by matching government contributions. As Carlos Gustavo Villela (2014) argues, such a scheme of "institutionalised collective remittances" not only enhances the benefits of remittances, but also the social positions of migrants in their home communities.

These measures are often conducted by a range of agencies in charge of protecting and resourcing diaspora communities, including the government and special statutory bodies. For example, the Overseas Workers Welfare Administration (OWWA) in the Philippines is based on the contributions from Filipino workers abroad (compulsory for those working through the channel of the Philippine Overseas Employment Administration, voluntary for others), and provides various services to facilitate migrants' return. Section 34 of the OWWA Act in 2016 stipulates its "Guiding Principle" as follows: "[It] shall provide gender-responsive reintegration programs, repatriation assistance, loan and credit assistance, on-site workers assistance, death and disability benefits, health care benefits, education and skills training, social services, family welfare assistance, programs and services for women migrant workers and other appropriate programs that provide timely social and economic services."[12]

These are just some ways in which sending countries play an indispensable role in addressing the vulnerabilities of temporary migrants. Such regulation is especially important for the early stages of the migration process since they directly affect the feasibility of TEPs without exposing migrants to unnecessary fear or debts.

[12] https://www.owwa.gov.ph/sites/default/files/files/IRR%20of%20RA%2010801%20(OWWA%20ACT).pdf (Last access: 8 November 2018)

5.2.4 Permanent Emigrants Abroad?

While the duties of sending states towards (would-be) temporary migrants can be illustrated rather straightforwardly, what duties should the sending states bear if their citizens are committed to PEPs? For PEPs, their duties are somewhat ambiguous, and this ambiguity leads to potential tensions. The difference between TEPs and PEPs lies in the planned levels of exit. Migrants who commit to TEPs are those who plan to return to their home countries after a certain period. They provide strong reasons for sending states to take care of migrants' interests as members of society over the whole course of their lives. While they physically leave, their senses of belongings are still rooted in their homeland.

When considering those who commit to PEPs, we may argue that there is no specific obligation for the latter to respect their choices. As I will argue in Chapter 7, the issue of which country should bear the primary responsibilities to long-term migrants is highly contested in theory and practice. The baseline argument I suggest is that even if migrants are intentionally permanent, it is unfair to treat them differently from intentionally temporary migrants for a certain length of time. This requirement of fair treatment can be justified by account for potential changes to their life plan. Even though a migrant committed to PEPs when she left, her intention may change and eventually she may return. Save for situations in which a migrant renounces her citizenship and hence cuts their jurisdictional ties, sending countries should treat all citizens fairly. If we try to accommodate these changes, the solution is to provide (would-be) migrants with a chance to make a choice about the services and support of their home country.

5.3 JUSTICE IN TEMPORARY IMMIGRATION

What protections and resources should receiving countries provide for temporary immigrants? Insofar as sending countries provide protection and resources to address the societal domination of temporary migrants, migrants are less vulnerable when realising their TEPs. However, if the policies of receiving countries do not protect and resource them, they are still vulnerable to domination in pursuing TIPs. Justice in temporary migration thus requires active involvements of both sending and receiving countries in protecting and resourcing TMPs.

In this section, I discuss five main policy areas in which temporary migrants are vulnerable to societal domination in their host states.

5.3.1 Residence and Work

The first area of concern is the right of residence and work of temporary migrants. It is reported that many temporary migration programs restrict migrants' right to work by tying them to a specific employer or sponsor. In the domination framework, the risk of employer domination is amplified if an employer holds arbitrary power over temporary migrants and temporary migrants are unable to contest his power or exit from the employment relationship. The notorious case is the Kafala system in the GCC (Gulf Cooperation Council) countries, where a sponsor holds full control over the visa and legal status of temporary migrants (Malaeb 2015). Under such system, temporary migrants are unable to contest employers' decisions because of their limited rights, and they cannot exit from a dominative relationship because the exit from an employment relationship automatically results in forced departure from that country.

Martin Ruhs (2013, 174) offers a qualified defence of restricting the work-related rights of temporary migrants: "the necessary constraint on free choice of employment is one that restricts migrants to work in specific sectors and/or occupations, not with specific employers." Yet, since the "immediate, complete, and unlimited portability" of the right to work would undermine the main rationale of temporary migration programs, he asserts that "[a] more realistic policy objective would be to facilitate the portability of temporary work permits *within a defined job category* and *after a certain period of time*" (Ruhs 2013, 174). In concrete terms, he proposes that the period should be set for six months within which employers cover a significant part of their recruitment costs. Joseph Carens (2008; 2013) argues for a more liberal position that the right to free choice of employment can be restricted maximally for three months, and even within this period there should be an "escape clause" in case of abusive behaviour by an employer.

I argue, more radically, that the right to residence and right to work should be separated (for a similar proposal, see Zou 2017, 99–100). The limitation of Ruhs (2013)' and Carens (2008)' proposal is that they tolerate the short-term restriction of the right to free employment and they maintain the connection between residence and work permits. Under their schemes, temporary migrants are still vulnerable and dependent on the arbitrary power of employers until certain time passes. The question is on what ground such a time restriction can be justified.

The background reason for a short time restriction of the right to work is to ascertain that temporary migrants will work and fill the labour shortage of a certain employer or sector, which allows employers to retrieve their recruitment costs. Proponents would argue that if we permit temporary migrants to choose employers or sectors at the outset, temporary migrants may leave too easily for another employer, resulting undermining the policy objective. This perceived fear is grounded on the assumption that temporary migrants are indeed thrown into an exploitive workplace where most migrants wish to change their employer if they have the option to leave. However, the question is how to prevent the exploitation and domination of temporary migrants in the workplace, and the employer-tied restriction is the core source of this injustice. As Mimi Zou (2017, 99) rightly points out, Carens (2008)'s proposal for an "escape clause" is "aimed at responding to highly exploitative labour situations when they occur, rather than preventing the very source of migrants' vulnerability arising from these immigration restrictions."

Therefore, I argue for the de-coupling of the right of residence and work. In practical terms, temporary migrants should obtain the right of residence (say, from several months to some years) with the right to employment choice from the beginning of their admission. Within the period of their residence, temporary migrants should be permitted at least to change their employers without risking their right of residence. As the decision to move to another country is a tough and costly decision, the decision to change an employer and workplace is also not without costs. If the employment relationship is sufficiently fair, it is also likely that temporary migrants will in any case remain with their initial employers.

Regarding recruitment costs, I do not deny that it is a legitimate concern for employers to recover their recruitment costs. However, this concern should be detached from the rights of temporary migrants because it can be managed in other ways. Under the Korean Employment Permit System, for example, employers are required to request permission to employ EPS workers by proving the unavailability of local workers, but the employer does not bear the recruitment costs. In this case, the recruitment process is managed by a government agency closely co-operating with sending countries. Where such governmental regulations are unavailable, it is also desirable that governments incentivise recruiters and employers to comply with protective laws and regulations. At this point, Martin (2017, chap. 7) argues for creating "incentive systems" in the receiving countries as well. There are many ways to reduce the employer's recruitment costs and induce them to comply with protective labour regulations. These measures not only to

permit migrants to leave an abusive employer, but also to support good recruiters and employers who comply with requirements.

It should be noted that the fair opportunity to change employer is indispensable to create a well-managed system. Where temporary migrants cannot change their employers, it becomes difficult for government officials to distinguish employers under which temporary migrants voluntarily work from those under which they work involuntarily. This is because migrants, in the absence of realistic alternatives, seemingly 'tacitly consent' out of fear that their legal residence may be revoked.

5.3.2 Social Rights

The second area of concern is social rights, including health insurance, contribution-based benefits, unemployment benefits, housing and educational supports, and pension schemes. For those who commit to TIPs, not all social rights seem necessary to pursue their goals. For instance, they do not need the right to a pension if they plan to go back after a certain period.

The argument offered by Carens seems a good starting point. Carens (2013, 114-124) distinguishes three layers of social rights: working conditions, work-related social programmes, and other social programmes. First, Carens argues that for working conditions, such as minimal wages or working hours, the 'local' standard of the host state equally applies to temporary migrants and sedentary citizens. Second, for work-related social programmes such as unemployment benefits, compensations for industrial accidents, and compulsory pension schemes, Carens offers a nuanced argument. While he maintains that simple inclusion is often preferable, he claims that whether temporary migrants are eligible or not depends upon the nature and purpose of these programmes. For work-related social programmes, he argues that temporary migrants should be entitled to the same set of rights as sedentary citizens insofar as they work and pay the same contributions and taxes.

If temporary migrants are intentionally temporary, is it justifiable to collect taxes for the benefits they do not receive in the long run? This is a difficult question because even for sedentary citizens the moral basis of welfare redistribution is contested. As Carens (2008, 430) argues, "[s]ince the goal of the programs is to support needy members of the community and since the claim to full membership is something that is only gradually

acquired, exclusion of recent arrivals does not seem unjust (although it may be ungenerous)."

I contend that a plausible compromise between inclusion and exclusion can be found by giving temporary migrants a *choice* about the eligibility for social benefits. Practically, temporary migrants may be given the option to pay general taxes for long-term welfare benefits or a special tax to be used for a specific purpose designed to support their TIPs. Such separation can be justified on the two grounds.

First, temporary migrants are usually expected to be smaller fiscal contributors and welfare takers. This calculation is still contested, but the key is that the perception is common in many destination countries. By establishing a special redistribution fund among temporary migrants, the government can escape such criticisms because the taxes collected from them are specifically used for them. As I noted in the last section, such special funds already exist in some major sending countries, and I propose the establishment of such a scheme in the receiving countries as well.

Second, this arrangement can better respect their distinct life plans. If temporary migrants have such options, they can contemplate whether they expect to stay for a longer period and to thereby receive equal social rights in the long run or to secure the conditions for achieving their short-term goals. In this case, distributive justice refers to redistribution among migrants, not sedentary citizens. If redistribution between temporary and permanent members is questionable, I believe that there are good reasons for promoting equality through redistributions among temporary members.

It is important to note that such separation can be achieved through co-operation with sending countries as well. Insofar as their life plans span two countries, both countries should bear certain responsibilities for securing their freedom. This means that not all welfare costs have to be covered by receiving countries only. Through bilateral treaties or MOUs, receiving and sending countries can divide the welfare costs and responsibilities shared between two states.

5.3.3 Family Reunification

The third area is the right to family reunification. It is a contested area since family reunification is usually considered as a key reason for temporary migrants to change their intention towards permanent residence. Inviting their families to the country of residence

makes us see a temporary migrant not as a nomad but a member of a family, and the welfare of migrant families usually creates education and housing welfare costs for the receiving country. However, with respect to the human right to private and family life, it needs a stronger reason to justify differential treatment.

We should distinguish unconditional and conditional rights to family reunification (Ruhs 2013, 175-176). An unconditional right to family reunification means that temporary migrants should be able to invite their family members without restrictions. A conditional right means that their rights might be permitted when temporary migrants satisfy a certain threshold condition, which may include proof that they can afford the living costs of their family members without creating fiscal burdens for receiving societies. As sedentary citizens too sometimes work apart from their families due to costs, or where their family members do not want to move for work, I think there is no reason for receiving countries to support temporary migrants' family lives specifically. Moreover, it seems unjustifiable if temporary migrants aim to receive greater welfare benefits by inviting their family members to join them. There is no justice-based reason to prioritise migrants over sedentary citizens.

Therefore, I consider that the right to family reunification is not an unconditional right that temporary migrants can exercise. It is not the right of migrants to exercise alone but is related to the rights and welfare of the reunified family members in the host country. It is reasonable to set certain conditions for its exercise. Certain conditions, which I consider legitimate, specifically demonstrate that migrants meet minimum income requirements that support their families in the host country and that family life does not place an excessive burden on the host country. What I object to is limits on the right to family reunification where migrants can demonstrate that they have sufficient savings or earnings to sustain their family.

I should add that, without giving temporary migrants the unconditional right to family reunification, several measures can be taken to support and facilitate their family lives. Measures would include issuing temporary visas for family visits, permitting re-entry after family visits under temporary migration schemes. Although many temporary migration programmes do not allow re-entry or family visas, it is desirable to facilitate regular contacts and unity between migrants and their families, as otherwise they may flinch from returning if their visa expires by their leave, resulting in longer separation from their families and communities.

5.3.4 Cultural rights

Temporary migrants, of course, usually come from a different culture than that of the receiving state. If we try to respect their life plans, we should pay equal concern and respect to their culture as well. However, the question is the extent such cultural rights should be protected.

For a start, there is no common culture among temporary migrants *per se*, given that this category does not mean a group but a serial collective (see Chapter 2). Therefore, respecting their cultures does not require identifying a core culture of temporary migrants. Because they do not constitute a cultural minority or group, the jurisdictional claims usually held by historical minorities does not apply to them. Therefore, the multicultural concerns for temporary migrants are mostly about what Will Kymlicka (1995) calls "polyethnic rights," namely the right to fair treatment.

Bouke de Vries (2017) argues that the receiving states should sometimes offer a cultural exemption for temporary migrants, but cultural subsidies (state funding of cultural and religious festivals, cultural community centres, etc.) and cultural recognition (meeting between state officials and cultural leaders and displays of cultural symbols, etc.) do not apply to temporary migrants. I endorse de Vries' conclusion. The important implication of his argument relates to the responsibilities of sending countries. Sending countries often engage in diaspora policies in order to keep cultural ties with their diaspora communities. As I will argue in Chapter 7, the legitimacy of external nation building suggests a limit of transnational responsibility. The cultural supports of sending countries should be limited to the goal of non-domination in the receiving countries but must not expand in ways that threaten to dominate their sedentary citizens.

5.4 TEMPORARINESS OF TEMPORARY MIGRATION

The above arguments sketched what temporary migration policies if just would look like. However, I bracketed the central policy issue in devising any temporary migration programmes: is it permissible to admit migrants strictly temporarily without a path to permanent residence and status citizenship in a host state? If exit-based empowerment policies are implemented by both sending and receiving countries, they would adequately

address the vulnerabilities of those who commit to TMPs. However, what if intentionally temporary migrants become intentionally permanent? What moral and political obligations should the sending and receiving countries bear towards those who have developed PMPs although where they have been admitted under temporary migration programmes?

The argument I offer is twofold. Firstly, there is no automatic right to permanence or citizenship. Secondly, however, the restriction of permanent residency and citizenship can be justified only on the basis that the receiving countries offer a fair and clear legal path for temporary migrants to permanent residence and citizenship. The key is that the time they spent in their receiving country should be counted fairly.

As I argued in Chapter 3, both idealists and realists agree that permanent temporariness should not be permitted in a liberal state. Theorists have so far advocated a secure residential status, namely jurisdictional permanence, as the solution to temporariness (Rubio-Marín 2000; Carens 2008; Lenard 2012). Importantly, the policies outlined in this chapter do not deny the importance of inclusion. What I have argued so far is that the norm of long-term inclusion should be supplemented, not replaced, by special measures for those who commit to TMPs. If temporary migrants pass the specific threshold condition of inclusion, they should be able to exit from their temporary status. In other words, temporariness should be temporary, not permanent.

The critical question is how to define a justifiable threshold of inclusion. Many scholars find that *the passage of time* is the key to answer this threshold question. Carens (2008) provides a good starting point for understanding how the passage of time matters in considering the rights and duties migrants enjoy. In his article on temporary migrants, he explicitly underlines the moral importance of the passage of time: "the longer the stay, the stronger the claim to full membership in society and to the enjoyment of the same rights as citizens, including, eventually, citizenship itself" (Carens 2008, 419). In a similar vein, Ruth Rubio-Marín (2000) argues for the principle of "automatic incorporation" according to which "states claiming to be committed to liberal democracy ought to be regarded as full members of their organized political community, all those who reside in their territory *on a permanent basis*, being subject to the decisions collectively adopted there and being dependent on its protection and recognition for the full development of their personalities" (Rubio-Marín 2000, 20).

While there are other criteria of inclusion, the passage of time is explicitly or implicitly crucial in their arguments. For instance, Carens' (2013) theory of "social membership" is a variant of the time-based theory because the passage of time is an important proxy of individuals' social ties:

> "What matters most morally with respect to a person's legal status and legal rights in a democratic political community is not ancestry or birthplace or culture or identity or values or actions or even the choices that individuals and political communities make but simply *the social membership that comes from residence over time*…. [Migrants] develop deep and rich networks of relationships in the place where they live, and this normal pattern of human life is what makes sense of the idea of social membership" (Carens 2013, 160).

Similarly, Ayelet Shachar uses the passage of time as a key for assessing the "genuine connection" between the political community and individuals (Shachar 2009; 2011): "[t]he longer the person resides in the polity, the deeper his or her ties to its society, the stronger the claim for inclusion and membership"(Shachar 2011, 131; Motomura 2006). This principle is logically structured and cannot work without actual residence in the polity. In other words, the recognition of their ties depends upon present and long-term continuous residence:

> "For those barred from legal membership under traditional principles of citizenship acquisition, the rootedness framework offers a path for earned citizenship arising from the existence of already established, real, and genuine ties toward the political community. The idea of emphasizing actual, continuous, and peaceful presence on a territory as the basis for legal title is here drawn primarily from property theory and doctrine" (Shachar 2011, 113).

What is common in the above lines of argument is that rights and citizenship are automatically strengthened as time passes by. Time works as the condition and measurement of the strength of migrants' entitlements.

Elizabeth Cohen (2018) explores why time matters in democratic politics. According to Cohen, time is a "political good" indispensable in procedures for distributing rights and also has "value" in democratic politics. The central value that time brings in democratic politics is *commensuration*. Cohen (2018, 128-131) argues that time is a principal metric in mediating the dilemmas generated by norm conflicts. First, there are many values and ideas which cannot easily be quantified. In the case of citizenship acquisitions, some may

prioritise the value of loyalty and culture, some may value more the social relationships cultivated by non-citizens, and some may value their skills or economic contributions to the community. These values are incommensurable. By using a time-frame, a government can create and apply a uniform quantifiable standard despite the apparent incommensurability of values. Second, a time-frame can address the conflict among foundational norms inherent in the notion of liberal democracy. While using a time-frame cannot solve the tension between the two, it can facilitate the "compromise" between them. Third, even if we can agree on a list of important values, we may disagree about which values should take precedence over the others. By employing a time-frame, we can sidestep or resolve norm conflicts. As Cohen (2018) argues, there are diverse views about what kinds of traits the naturalisation applicants should exhibit. The lesson here is that even though the core values pursued by naturalisation policies are different, their proponents may agree upon a specific time-frame.[13]

I contend that this view of time has several implications for thinking about the temporariness of temporary migration. One's life plan is a process with renewals and changes. Because all individual hold life plans tied to their conception of the good, we cannot readily generalise about their plans. They are unique in themselves. If a government were to accommodate these diverse life plans by differentiating their enjoyment of rights based on each life plan, it would inevitably collapse the stable regime of rights and hence amplify the risk of political domination or *imperium*. It is at this point that specific time-frames matter in reasonably accommodating possible changes in life-plans. By setting a time-threshold, states do not need to be concerned at an institutional level with the questions of when and how their life plans were changed. At the same time, if a specific time-frame is set, temporary migrants can easily understand the condition for permanence

This argument leads us to think about the further question: *how should time be counted*? If we employ time as an essential metric of commensuration, it should be counted fairly. In this respect, Cohen (2018) argues that a time-based framework constitutes a "political economy of time." Under the political economy of time, a government may overvalue or devalue one's political time. On one side of the spectrum, by trading money with rights

[13] Cohen (2018) argues that the commensuration the time frame permits can achieve what Cass Sunstein called "incompletely theorized agreements" (Sunstein 1995).

'desirable' migrants, such as immigrant investors, usually acquire nearly full set of rights without spending any time in a country. In this case, their time is overvalued, or it shows the "dominance" of money over time. On the other side of the spectrum, the time of circular migrants or undocumented migrants is undervalued and is not fairly translated into the better enjoyments of rights. In this way, for Cohen, devaluing one's political time is the cause of "political exploitation" regarding rights, which is similar to the way in which economic exploitation occurs where one's labouring hours are not adequately valued regarding wages.

As Cohen (2018, 142) argues, "[t]o devalue someone's time is to devalue her actual life and life span. It is a thoroughgoing means to disenfranchise someone." Indeed, while many scholars criticised the marketisation and commodification of citizenship, few scholars examined the implication of the "temporal price of citizenship." My argument is that the political time which temporary migrants spend should be counted fairly when reckoning their rights. This means that the governments should not only set the specific time frame (say, three to five years for permanent residence) but also count political time fairly. In many countries, even though temporary migration programmes involve long-term settlements, temporary migrants are unable to become permanent because they have no such entitlement. This is a clear case of political exploitation and domination, not only neglecting the possible changes in their life plans but also unjustly devaluing their political time.

In advocating time-based inclusion, I want to make three qualifications. First, fairly counting their political time neither obliges temporary migrants to become permanent nor prioritises permanence over temporariness. While long-term inclusion is necessary for those who commit or come to commit to PMPs, it is not for those who adopt and retain TMPs. While some scholars argue for automatic or mandatory citizenship after a certain period of residence (Rubio-Marín 2000; De Schutter and Ypi 2015). I argue that permanence and citizenship should not be mandatory. As Rainer Bauböck argues, 'naturalization can be either discretionary or an entitlement, but it always depends on the active consent of the person to be admitted' (Bauböck 2003, 150).

Secondly, fair exit from temporariness does not necessarily mean that all temporary migrants become permanent. Statistical evidence affirms that most temporary migrants commit to TMPs. As Ottonelli and Torresi (2012, 219) argue, intentionally temporary migrants usually become intentionally permanent when their residence becomes long

term because they become "trapped" in abusive employment that hinders them from reaching the specific goal of TMPs. These include the failure to reach a savings target, to acquire a specific skill, or a bad employment and welfare prospects upon return. The main rationale of transnational exit-based empowerment is to protect and resource temporary migrants to carry out their life plans to study and work abroad for a short period. Therefore, we should view the options for permanence and citizenship as a remedial measure for accommodating possible changes in their life plan.

Thirdly, the option of permanence and citizenship requires stronger coordination with sending countries. As I argued throughout this chapter, sending countries play an indispensable role in addressing the vulnerability of temporary migrants before and after departure. The number of temporary migrants who change their intentions and wish to become permanent residents is of interest for sending countries because lower rates of return signify not only the supposed failure of external protection and resourcing, but also a lowering of remittances and higher risks of brain drain or 'brain waste' (Pires 2015). This impedes the developmental potential of temporary migration.

In the end, what is the role of permanent residence and naturalisation in the context of temporary migration? My answer is that while access to permanence and citizenship is not the first-best option for most temporary migrants, receiving and sending countries should accommodate potential changes in their life plans. If both countries find high levels of long-term temporariness problematic, the proper measure is not to force them to return but to protect and resource them to achieve their life plans.

There is no logical incoherence in preventing domination over temporariness while keeping the path to permanence open. Nor is it assumed that all temporary migrants should become permanent citizens. Many would leave if they could achieve their aims successfully. The key element is to offer migrants genuine choice to achieve their projects without fear or deference.

5.5 CONCLUSION

The argument of this chapter, in essence, requires us to appreciate the possible changes of the life plans of temporary migrants while prospectively preventing and retrospectively remedying domination through a transnational governmental structure. What may change is migrants' sense of belonging and life-course. What should *not* change

is their freedom from any arbitrary constraints restricting their life-course decisions. The ultimate end of this view is to protect their context of choice and autonomy from the arbitrary will of others. If these above conditions are met, we can say that temporary migrants are free despite their divided political membership between sending and receiving countries.

While I outlined what the domination-sensitive temporary migration programs would be, I do not think that my approach is complete, because the concrete systems of temporary migration programmes should be justified to migrants themselves, and it is impossible to deduce the ideal blueprint from a theory. The required levels of protection and supports should be different according to the different combinations of states, and these commitments are highly unstable and segmented. It is difficult to avoid such indeterminacy against the backdrop of the complex interests, identities, and vulnerabilities at stake.

As a result, the areas of concern discussed can only be resolved politically or democratically by representing the specific needs and claims that temporary migrants have towards their country of residence and origin. This means that we need a transnational public space through which temporary migrants can make claims over decisions that affect and coerce their freedom of choice. It is only when such a transnational public sphere exists that sedentary and temporary citizens can act together to (de-)legitimise migration and citizenship policies. This is the central concern for the next chapter: how and to what extent should migrants' interest be represented in migration and citizenship policies?

Chapter 6: Democracy and Temporary Migrants

INTRODUCTION

As I argued in Chapter 4, freedom as non-domination is premised upon the conditions of non-vitiation and non-invasion. Non-domination requires that individuals be protected and resourced to enjoy functional capability over a suitable range and depth of choices, and that no one has a capacity to interfere with their choices on an arbitrary basis. In Chapter 5, I examined the nexus between non-vitiation and temporary migration. The enabled and institutionalised exit option can not only directly empower individuals to pursue their life plan but also signals their dissatisfactions which incentivise policymakers to respond to their interests.

However, I also underlined that the fair opportunity of exit is necessary but not sufficient for assuring non-domination. To the extent that individuals' choices are hindered by governmental decisions, they should be empowered to make a contestatory claim against them. The relevant question is how to institute such contestatory claims. Does it require that temporary migrants be enfranchised on the same footing as sedentary citizens in both sending and receiving countries? How can the freedom of migrants to pursue their life plans be secured in terms of contestability?

In this chapter, I will make three claims. First, as a matter of the principles of democratic inclusion, there are strong reasons as to why temporary migrants should have a chance to contest the decisions or structures that affect or coerce their choices. The need for political empowerment derives straightforwardly from non-domination. Moreover, whereas there are various principles of democratic inclusion, such as the principles of affected interests, coercion, and stakeholdership, all of them converge on the reasons why temporary migrants should be empowered to have a voice.

However, secondly, there are also several reasons why treating temporary migrants as equal to sedentary citizens in sending and receiving countries cannot adequately address the issues at stake. Firstly, it does not respect the different life plans which temporary migrants may hold. Secondly, including all temporary migrants may threaten the democratic stability and intergenerational character of democratic citizenship. Thirdly, it wrongly equates the concept of political equality with procedural and formal equality,

which does not take into account the contextual differences and stakes that individuals hold against political authorities concerned.

Thirdly, given this justification for differentiated citizenship for temporary migrants, I compare the alternative paths to contestatory democratisation. I distinguish between enabled and institutionalised contestations and make a case for the latter in representing migrants' interests. While there are many possible channels, I argue that the most promising one is the creation of *emigrant* and *immigrant councils*, that is, state-level advisory councils composed of emigrant/immigrant representatives selected through the democratic system with the specific task of representing the interests of emigrants/immigrants.

In the first section, I highlight why political voice is necessary for the non-domination of temporary migrants and set out the questions of this chapter. In the second section, I examine how the different principles of democratic boundaries have different implications for the democratic entitlements of temporary migrants. In the third section, I make a case for differentiated citizenship for temporary migrants. In the fourth section, I distinguish between enabled and institutionalised contestations and explain why enabled contestation is insufficient. In the fifth section, I propose suitable forms of institutionalised contestations in receiving and sending country, while developing a vision for transnational contestatory representation.

Overall, this chapter explores the conditions of legitimacy of migration and citizenship policies. In summary, I argue that migration and citizenship policies are legitimate insofar as both receiving and sending countries institutionalise contestatory channels for migrants that enable them to (de)legitimise the decisions which significantly affect and coerce their choices.

6.1 TEMPORARY MIGRANTS, POLITICAL AGENCY, AND LEGITIMACY

Freedom as non-domination emphasises that all individuals, whether they are resident citizens, immigrants or emigrants, should be empowered to impel power-holders to track their interests. As I argued in Chapter 2, temporary migrants are affected and coerced by the policies of both sending and receiving countries. Accordingly, temporary migrants should be empowered to oblige decision-makers of both governments to track and respect their interests.

Political participation is important for democratic legitimacy. On the one hand, because individuals have different preferences based upon different conceptions of the good, it is not possible to agree upon all elements of social justice. On the other hand, because of inevitable interdependence, their aggregated preferences bind all those who are affected by that decision. Policies over collective properties significantly affect our lives and coercively restrict our freedom and choices. In this context, the coercive political authorities usually denote nation-state governments. States have the power to imprison, send an army to war, and to kill. While other institutions like NGOs and international organisations also exercise what Terry MacDonald (2008) called "public power," it is sovereign states that still hold supreme and comprehensive power over people. State policies should be reasonably and democratically justified to those who are bound by decisions, even if they hold different views and conceptions of good. In this vein, political freedom is not only a *means* to democratically legitimise coercive policies but also an *end* that realises freedom as non-domination.

Political freedom collectively empowers individuals to (de)legitimise coercive policies and institutions. However, if one is bound by a decision of a government but not empowered to take part in the legitimation process of that government, it can be argued that one is consequently vulnerable to domination and not treated with equal concern and respect. It is at this point that the condition of non-vitiation outlined in the last chapter is necessary but not sufficient for realising non-domination. To enjoy non-domination, we should find a locus of migrants' agency through which they enact their claims and incentivise changes in policies.

However, in the contemporary world, temporary migrants are not well-resourced to enact such claims. Certainly, the growing international movements have disaggregated the tight congruence between territory, citizenship, and state (Sassen 2006). Internally, many countries permit non-citizen voting at local elections, and 5 countries even accord voting rights in national elections to residents without regard to their citizenship (Arrighi and Bauböck 2017). Externally, more than 120 states now implement external voting rights (Collyer 2014). This trend towards "expansive citizenship" (Bauböck 2005) indeed suggests that the enjoyment of political freedom does not necessarily require territorial residence and citizenship status.

Yet, the political standing of temporary migrants is still ambiguous. This has an internal and external dimension. Internally, because most countries place significant restrictions

on voting (requiring several years of residence for the enjoyment of local voting or granting such rights only to those who hold a special status on a reciprocal basis), most temporary migrants do not enjoy the benefits of non-citizen suffrage. Indeed, no country accords the right to vote in a national election to non-citizens who stay only for a short period. The external dimension is evidenced by the debate over the external franchise. While it is true that many temporary migrants now enjoy the right to vote in a national election on the same footing as sedentary citizens of their home states, the legitimacy and effectiveness of external franchise are still debated (López-Guerra 2005; Rubio-Marín 2000; Spiro 2006; Bauböck 2007; Honohan 2011). Indeed, temporary migrants are a category which is "hard to locate on the map of democracy" (Carens 2008).

To locate the agencies of temporary migrants on the normative terrain of democratic politics, we should first understand the moral and political basis of democratic entitlement. Many theorists argue that individuals who are affected by a policy decision should have an opportunity to influence that decision (Dahl 1970; Shapiro 1999; Goodin 2007). This "principle of affected interests" would require extending participatory entitlements to those who are often seen as outsiders, such as non-citizen residents, non-resident citizens, or even non-resident non-citizens. Yet, it is also true that even though some individuals are affected by a decision, the intensity and scope of affectedness differs dramatically. All policies affect different interests to different degrees and are likely to affect some interests more directly and immediately (Näsström 2011, 124–25; Koenig-Archibugi 2012). On this interpretation, we may thus conclude that it is wrong to enfranchise all affected individuals on an equal footing.

At this point, temporary migrants present an interesting case. Temporary migrants are affected and coerced by the policies of both sending and receiving countries. Does this fact justify the enfranchisement of temporary migrants on the same footing with sedentary citizens in both countries? I say it does not. The fact that political decisions affect interests extensively and diversely mean that we need extensive and diversified ways of democratic engagements beyond the traditional scope of democratic government. However, this does not mean that everyone should enjoy equal rights of participation in every decision. The point is to have more channels of representation proportionate to the complex and overlapping ways in which structures of power and decisions can affect individuals and their interests.

I argue that while temporary migrants are stakeholders in the decisions of both sending and receiving states, it is disproportionate to enfranchise them on the same footing with sedentary citizens in receiving and sending countries. What is proportionate is to give them an effective opportunity to contest the decisions that condition their freedom. It is such a right of contestation, so to speak, that grounds the political responsibility of both states to institute suitable contestatory channels through which their interests are publicly represented in the decision-making process. I try to show that proportional representation and differentiated citizenship are not only consistent with the ideal of political equality but also have many advantages in incorporating into the democratic process those who do not hold a comparable stake to the sedentary citizens.

6.2 THE BOUNDARY PROBLEM OF DEMOCRACY AND TEMPORARY MIGRANTS

Who should be entitled to take part in the democratic decision-making process? This question is now commonly referred to as the "boundary problem of democracy."

If democracy is understood as the rule of people, any account of democracy should at least explain two elements: *how to rule* and who the people are. As many commentators note, most democratic theory has focused upon the former. As Frederick Whelan (1983, 13) notes, "[t]he concept of democracy, although protean, always makes reference to a determinate community of persons (citizens)—a 'people'—who are collectively self-governing with respect to their internal and external affairs". If democracy is premised upon the collective self-government of people, any account must answer "the question of the appropriate constitution of the *people* or unit within which democratic governance is to be practised" (Whelan 1983, 13). Yet, until recently relatively little attention has been paid to this question. As Robert Dahl (1970, 60-61) notes, "[s]trange as it may seem to you, how to decide who legitimately make up 'the people' – or rather *a* people – and hence are entitled to govern themselves in their *own* association is a problem almost totally neglected by all the great political philosophers who write about democracy." In a similar vein, Sofia Näsström (2007) argues that, whereas theorists argue about the "legitimacy of government," they have long neglected the "legitimacy of people," that is, how the boundary of a democratic people is legitimately constituted.

The relative silence over the legitimate constitution of the demos can be explained by the fact that, for most theorists, the answer is taken as given: Italy is Italian, Japan is

Japanese, etc. If the current composition of the demos is defined by pre-political facts, such as historically given nationhood, or prehistorical facts, such as coastlines or mountain ranges, these boundaries are inevitably beyond philosophical justification. If we follow this line of argument, there would be no democratic way to draw a democratic boundary. Hence, it may lead us to endorse Joseph Schumpeter's intuition: "[m]ust we not leave it to every *populus* to define itself?" (Schumpeter 2006, 245). For Schumpeter, how the boundary of the demos is drawn is external to the definition of democracy, and there can be no justifiable standard that applies across democracies.

However, if we try to find a reasonable principle of democratic boundary from within democratic theory, another paradox arises. Whelan (1983, 40) argues this point: "democratic theory *cannot itself* provide any solution to disputes that may – and historically do – arise concerning boundaries. […] It may not be surprising that democracy, which is a method for group decision-making or self-governance, cannot be brought to bear on the logically prior matter of the constitution of the group, the existence of which it presupposes." Dahl (1989, 207) also writes that "we cannot solve the problem of the proper scope and domain of democratic units from within democratic theory."

As Gustaf Arrhenius (2018) points out, this is a logical necessity if we understand democracy only as a *method* of decision-making. If we try to decide the proper boundary of a demos through a democratic method, we need to presuppose the existence of the demos before that demos can decide on the boundaries that are constitutive for its very existence. But this is obviously the circular reasoning. At this point, Robert Goodin (2007, 53) argues that "which interests are 'actually affected' depends on who gets to vote. Hence, it is incoherent to try to determine who should get to vote by asking whose interests are actually affected by the course of action actually decided upon. It is like the winning lottery ticket being pulled out of the hat by whoever has won that selfsame lottery."

However, democracy is not only a practical decision method but also a normative ideal composed of a set of values like political equality and freedom. It is possible to reject democracy as a decision method for determining democratic boundaries but still accept it as a normative ideal (Arrhenius 2018). In other words, even if the democratic *method* is certainly cannot decide the proper democratic boundary, we can still discuss better ways to realise the democratic *values* of political equality and non-domination (see also Bergström 2017).

In what follows, I examine how the different principles of democratic boundaries have different implications for the democratic entitlements of temporary migrants. While there are many principles and various interpretations, I concentrate on only three of these: the principles of affected interests, coercion, and stakeholdership. I claim that while each principle suggests legitimate grounds for temporary migrants' voice, they all imply that their full enfranchisement is not necessarily justified.

6.2.1 The Principle of Affected Interests

Nearly a half-century ago, Robert Dahl presented a guiding principle for democratic inclusion, which he calls "the Principle of Affected Interests" (PAI): "[e]veryone who is affected by the decisions of a government should have the right to participate in that government" (Dahl 1970, 49)[14]. Dahl contends that PAI is "very likely the best general principle of inclusion that you are likely to find." If we take this principle as it stands, it supports a prima facie case for the enfranchisement of temporary migrants because temporary migrants are affected by the decisions of both sending and receiving countries. However, just after defining this principle, Dahl (1970, 49) argues that it "turns out to be a good deal less compelling than it looks."

Dahl lists three difficulties in employing this principle for drawing the legitimate boundary of a demos. First, the *scope* of affectedness varies from one decision to another. If the boundary of a demos follows the scope of a decision, it logically means that we need a different set of demoi for decisions that have a different scope. Second, even if we can fix the scope of affectedness, the affected people are by no means equally affected. Third, the evaluation of affectedness involves many subjective factors. I will add a fourth difficulty: it is unclear what precise participatory entitlements are generated through being affected.

The four difficulties in applying PAI, however, explain not only its limits but its potential. As Arrhenius (2018, 104) points out, "[o]ne reason why many people agree with the All Affected Principle is […] that it is quite imprecisely formulated and thus open to

[14] This principle is often called as "all-affected principle" (e.g. Goodin 2007; Näsström 2011). However, I follow Dahl's original naming because Dahl (1970, 49-50) cautions that this principle does not mean to include 'all' those who are affected and to include them 'equally.'

many interpretations and precisifications [*sic.*]." As a result, there is a wide – possibly too wide – array of interpretations of PAI in the literature.

Some scholars try to delimit the scope and intensity of affectedness by narrowing the relevant interests. For instance, Ian Shapiro (1999, 85–88) deploys a specific interpretation of "basic interests." For Shapiro, "basic interests" are "the essentials to survive in the world" such as interests in nutrition, security, health, and education. Carol Gould (2006, 54) also argues that only those whose "basic human rights" are affected should have a say.

Others try to specify the condition of being *relevantly* affected. Robert Goodin (2007, 55) argues that on the possibilistic interpretation of PAI, it logically requires that "[v]irtually (maybe literally) everyone in the world – and indeed everyone in all possible future worlds – should be entitled to vote on any proposal or any proposal for proposals." David Owen (2012) counters Goodin's interpretation by proposing that we should instead focus on "actual" affectedness, which can be evaluated through analysing the range of "plausible options" in the decision-making process.

Finally, scholars also differentiate the democratic entitlements generated by being affected. For instance, Owen (2012) reinterprets PAI not as a principle for drawing the boundaries of membership in a self-governing polity but as a principle with two-dimensional purposes: to specify "the scope of the duty of justification" and to ground "an entitlement to establish impartial structures of governance to secure the impartial treatment of affected legitimate interests." On Owen's interpretation, affectedness generates entitlements to voice. However, merely being affected does not entitle individuals to full enfranchisement and membership in the polity. In a similar vein, Rainer Bauböck (2018) criticises employing PAI as a comprehensive answer to the boundary problem. Instead, he proposes PAI should be employed specifically to interests in "policy decisions" rather than to interests in protection by the government or in membership in the self-governing polity.

Given that there are many interpretations of PAI, what implications should we draw in relation to temporary migrants? Obviously, the implications are not straightforward. Let me offer an illustrative example of immigration control, which seems counter-intuitive. Under the current structure, immigration policies primarily target would-be immigrants and non-citizens. While immigration policies also affect sedentary citizens, their affectedness is rather indirect and less pervasive. Let us employ a typical interpretation

of PAI, which requires that only those whose interests are significantly affected should have the right to vote on the decision at stake. This leads to a rather surprising result. It seems that those immigrants who are under the direct control of the immigration policy have a stronger right to participate in that decision than sedentary citizens.

This conclusion should be counter-intuitive. However, it seems inevitable if PAI is to remain logically coherent. The implication becomes much broader if we apply this principle to other policy domains. If "the causal principle of affected interests suggests that ideally the structure of decision rules should follow contours of power relationships, not that of memberships or citizenships" (Shapiro 1999), it logically means that there should be many decision-making demoi for many different decisions. David Miller (2018, 129) correctly criticises it as "fantasy," that "democracy could work on an ad hoc basis, with different constituencies being assembled to decide each issue as it arose." How can a democratic government be sustained given such a proliferation of decision-making demoi?

I believe that we can avoid this dilemma by distinguishing the levels of decisions and correspondent power accorded to individuals. As Owen (2012) and Bauböck (2018) argue, PAI can be employed to demarcate the possible scope of the rights and duty of justification, but this scope of justification does not automatically imply that all those affected are to be included in the demos. Rather, it is perfectly compatible to hold that while taking into account the interests of those affected, the actual decision can be taken by other peoples, i.e. decision-makers. On this reading, PAI is indeed *not* a principle for demarcating the demos authorising the decision-makers. Yet, this is a good principle to establish the responsibility of decision-makers to discursively take into account the interests of those who are affected by a decision.

The implication here is not to reject PAI altogether. Given that PAI has a wide scope of application, it can be employed to delimit and focus on the interests of the affected in many areas. We may, for instance, criticise irresponsible government policies that adversely affect innocent outsiders and claim that the government should take into account their interests. Narrowing down the scope of PAI might devalue its wider possibility to be employed for criticising political reality. The error consists in defending this principle as the sole basis of any boundary-making, neglecting the differences of contexts and interests at stake.

6.2.2 The Principle of Coercion

The second principle is the principle of coercion (hereafter, PC). This principle basically proposes that those subjected to the coercive power of a government should have the right to participate in that government.

In his classic work on membership, Michael Walzer explains the spirit of PC: "[m]en and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does" (Walzer 1983). The key point of PC is that any governmental coercion should be justified to those coerced because coercion may undermine their autonomy.

While PC is sometimes considered as the different version of PAI, Rainer Bauböck (2018, 28) argues that they are different in important ways. First, PC grounds democratic entitlement not in affectedness but coercion. Not all those who are affected by a decision are subject to the coercive power of the state, because the scope of coercive powers of the states is often territorially circumscribed. While this scope can be broadened if we adopt a broader conception of coercion, territorial jurisdiction is usually considered as a proxy for the scope of legitimate coercion. Second, the principle of coercion entails a stronger claim to equality because the relevant metric is not affectedness by a policy output but subjection to government institutions. While individuals can be *unequally* affected by a policy of a government, it is possible to hold that they are *equally* subjected and coerced by the government.

Like PAI, PC is also open to many interpretations regarding its scope, intensity, and agency. As a matter of scope, scholars usually consider the territorial jurisdiction as the relevant metric of governmental coercion. However, Arash Abizadeh (2008) argues that immigration control coerces all those who are outside its territorial jurisdiction, and that therefore "any regime of border control must either be jointly controlled by citizens and foreigners or, if it is to be under unilateral citizen control, its control must be delegated, through cosmopolitan democratic institutions giving articulation to a 'global demos,' to differentiated polities on the basis of arguments addressed to all."[15] Like the PAI, the coercion principle also has an expansive implication for the scope of justification.

Second, there is a question of intensity. For instance, Iseult Honohan (2014) argues that that while it is possible to argue that potential migrants outside the borders are subjected

[15] For the different view about the coerciveness of immigration control, see Miller (2010). .

to coercion, the intensity and extent of domination by migration controls significantly differ. As many migrants, even potential migrants, are exposed to domination, arbitrary migration policies should be constrained and contestable. However, due to this variation, the mere fact of coercion does not necessarily ground a claim to full enfranchisement.

Third, there is a debate over how coercion is justified. From a liberal perspective, Michael Blake argues that hypothetical justification suffices by asking whether the coercion invades one's autonomy in a way one can reasonably reject (Blake 2001). In contrast, from a democratic perspective, Abizadeh (2008) argues that any coercion generates the need for actual democratic participation.

As may be evident, PC has a resonance with domination theory. As I argued in Chapter 4, if one's choice may be hindered by the decision of another, one is vulnerable to invasion unless one has a contestatory power to force the power-holder to track one's interests. In this reading of the relationship between possible coercion and contestation, the scope of coercion thus demarcates the scope of contestation or editorial control.

However, I contend that PC is not a full account of democratic authority. Although this view is fully consistent with the neo-republican value of contestatory democratisation notably advocated by Pettit (1999), it does not provide a sufficient account of the value of self-government. The basis of the full entitlement to participate in democratic politics goes beyond the important issue of subjection alone. Indeed, apart from Abizadeh (2008), most coercion theorists agree that mere subjection does not generate the full entitlement for membership. For instance, Honohan (2018) argues that "long-lasting and future subjection" and "interlinked interests" are the threshold conditions for democratic inclusion, which is not clearly met by most temporary migrants. As Honohan (2018, 154) argues, while migrants should be offered necessary protections and contestation, "if the coercion involved does not add up to continuing subjection, it may not provide grounds for full inclusion in the existing polity."

Given that temporary migrants are subjected to the coercive powers of both states, PC grounds the equal protection and contestatory rights of temporary migrants at least in the short run. I leave the question open of whether the thicker notion of subjection or coercion can be employed to draw the legitimate boundaries of the demos. The point is that mere possible threat of coercion constitutes sufficient stakes for equal protection and editorial representation for temporary migrants. And insofar as states coerce individuals,

PC grounds the corresponding duty on states to enable and institutionalise contestations for those subjected.

6.2.3 The Principle of Citizenship Stakeholder

The third principle is the principle of stakeholdership or citizenship stakeholder (hereafter, PCS). According to Bauböck (2018, 41), "[c]itizens are stakeholders in a democratic political community insofar as their autonomy and well-being depend not only on being recognized as a member in a particular polity but also on that polity being governed democratically."

PCS is different from PAI and PC in two respects. First, while PAI and PC are "output-based" principles that determine a boundary of demos through the outcome of the democratic process (subjection or decisions are taken by a government), PCS is "input-based" in the sense that it focuses on "the relations of individuals to a particular political community rather than to a government and its decisions" (Bauböck 2018, 39). The added value here is the specific relationship between individuals and a polity. On the one hand, if I travel around Italy, my interests can be affected, and I can be coerced by the decisions of the Italian government. However, this fact of affectedness and coercion does not generate a full entitlement to participate in Italian politics. This is because I do not hold a stake in the Italian polity that is comparable to that of sedentary Italian citizens in terms of linking their autonomy and well-being with the flourishing of the self-government of the Italian community. On the other hand, if I am a long-term resident in Italy and cultivate political ties sufficient for linking my autonomy with the self-government of Italy, PCS grounds a full entitlement of Italian citizenship. In these ways, PCS can clarify the threshold condition of full inclusion by looking at the actual political relationship cultivated through the interaction between individuals and a self-governing polity.

Second, unlike PAI and PC, PCS takes the value and capacity of self-government seriously. Popular self-government requires a stable and intergenerational system of control rather than the mere aggregation of short-term interests. Self-government cannot be effective without the empowerment of the people to authorise a government that rules in its name. Bauböck (2018) argues:

> "Democracy […] needs a sense of 'ownership' and belonging to the polity. It is difficult to imagine how hypermobile populations could be citizens of the

> territorial polity who authorize the government that issues and implements the laws to which they are subjected. If there is a relatively sedentary core population, then immigrants can integrate into the society while emigrants can remain connected to it across borders. Where there is no such core, it will be difficult to generate among territorial populations a sense of responsibility for the common good of the polity" (Bauböck 2018, 17).

As his remark makes it clear, democratic self-government requires not only a well-functioning government but also stable demos: "[a] democratic people is created through representation of its claims to self-government. Democratic representation is not merely a procedural device through which citizens can control a government that rules over them; the democratic people itself is constituted through representation of its claims to self-government" (Bauböck 2018, 43).

What is the implication of PCS for temporary migrants? Bauböck (2018) proposes a nuanced argument. First, we should treat first-generation emigrants as genuine stakeholders of a sending state, which can permissibly ground their full enfranchisement through external voting rights. Yet, Bauböck argues that in the cases of second or third generations born abroad, the justifiability of full enfranchisement becomes questionable. Therefore, PCS justifies the full enfranchisement of first-generation emigrants, including temporary emigrants. Second, in receiving countries, temporary immigrants are not considered relevant stakeholders of the polity at least at the national level. The threshold condition is set by a number of factors determining a "genuine link." Therefore, it is justified not to enfranchise temporary immigrants unless they cultivate political stakes sufficient to trigger a claim of full inclusion.

6.2.4 Synthesis

All the three principles suggest different degrees of democratic entitlements which temporary migrants should enjoy. PAI underlines that if the basic interests of temporary migrants are affected by a policy, they should have a discursive voice. PC underlines that temporary migrants are vulnerable to coercive policies and thus their voice should be editorial and contestatory. Finally, PCS justifies the full enfranchisement of temporary migrants in sending countries and their disenfranchisement at least in national elections of the receiving country in the short run.

Bauböck (2015, 2018) proposes that these three principles be viewed as complementary. As he explains, PCS constitutes the core element of his pluralistic theory of democratic inclusion. As we saw above, PAI and PC can be interpreted differently, and the different interpretations result in the different entitlements for voice. The advantage of Bauböck's theory is that it generates a proper division of labour between three principles. As he formulates, it PAI, PC, and PCS can be endorsed simultaneously and without contradiction because they concern different democratic boundary questions, namely, "whose interests should be represented in policy decisions?" (PAI), "who should be protected by government power and have the right to contest it?" (PC), and "who should be a citizen of a self-governing political community?" (PCS) (Bauböck 2018, 87).

Following David Owen (2018), I further contend that these three principles denote three different scopes and corresponding democratic entitlements. On this interpretation, PAI defines the scope of "discursive" representation, PC demarcates the scope of "editorial" representation, and PCS draws the boundary of "authorial" representation.

I thus share Bauböck's insight that there is no need to have a single principle of democratic inclusion but a plurality of principles. Temporary migrants have many stakes. They are affected, coerced, and their autonomy can be linked to the value of self-government and the flourishing of respective polities. The plurality of principles suggests that there should be a plurality of democratic entitlements.

Locating temporary migrants within this pluralistic framework of democratic voice reveals the complex grounds and modes of democratic entitlements. Insofar as migrants' interests are significantly affected by the policies of both sending and receiving countries, they should enjoy opportunities for discursive representation. Insofar as they are subjected to the coercion of states, they should be able to enjoy equal protection and editorial representation. While temporary migrants do not hold a sufficient stake for full enfranchisement in receiving countries at least in the short run, there is a valid ground for their enfranchisement in sending countries.

6.3 THE CASE FOR DIFFERENTIATED CITIZENSHIP

The preceding discussion suggests that temporary migrants hold different stakes, and different stakes generate the need for different methods of democratic engagement. However, such a pluralist strategy might be criticised as neglecting the value of political

equality. The argument goes that the primary measure of political equality is the right to vote, and if some individuals do not have this right, they are not treated as equals. Let me call this objection as the 'equal treatment' objection.

This is an important challenge. As my discussion justifies a differential treatment of temporary migrants at least for a limited period, we need to consider whether such treatment is consistent with the value of political equality. I counter the equal treatment objection in three ways. First, the equal-treatment model cannot accommodate the distinct needs of temporary migrants and fails to address their vulnerability. Second, by including all temporary migrants, it might undermine the value of self-government and intergenerational citizenship. Third, this view is reductionist in equating the ideal of political equality to pure procedural equality.

6.3.1 Addressing Vulnerability

Firstly, while we may be able to justify the full inclusion of temporary migrants in both sending and receiving countries, it is questionable whether this can effectively address the vulnerability of temporary migrants. As Ottonelli and Torresi (2012) argue, temporary migrants are socially vulnerable because of their specific life plans. The attribution of voting rights does not effectively reduce their vulnerability as it fails to address the subalternity resulting from their life plans.

However, as Alex Sager (2012) argues, such a reason may underrate the symbolic and procedural value of voting rights. I admit that, if we tightly connect non-domination with voting rights, it might be possible to justify temporary migrants' full enfranchisement. I also admit that in the case of women or disenfranchised minorities, most of them finally demanded full voting rights. Why should we limit the possibility of full enfranchisement of temporary migrants? The answer is that the injustice in the categorical exclusion of these other disadvantaged groups is not equally present in the case of temporary migrants. Temporary migrants often expect to stay for a shorter period, and their stakes are not equally comparable to those of sedentary citizens. Their case is thus radically different from that of women or disenfranchised minorities who held a comparable stake and interests in self-government but were denied participating in that process.

Yet, critics might counter this view by noting that it unnecessarily narrows the varieties of life plans. Even if my argument applies to intentionally temporary migrants, what about

intentionally permanent migrants? If we take into account the forward-looking stakes which temporary migrants may cultivate in the long run, why should we distinguish between temporary and sedentary citizens? I admit that not all temporary migrants are intentionally temporary, and many of them might become intentionally permanent. However, the question concerns the extent to which we should differentiate rights based upon intentional preferences.

Recall my argument in Chapter 5. I claimed that the political time of temporary migrants should be counted fairly. The passage of time can accommodate different and conflicting values into a quantifiable measure. As I claimed, the fair exit option in the context of temporary migration should be fair for all those who are in a similar condition regardless of skills or wealth. Just as we should not distinguish the voting age depending upon their knowledge or competence, we should not treat differently those migrants who are similarly situated. I do not argue that there is no need to prepare for the full enfranchisement of temporary migrants. If they pass the minimal requirements and time threshold, they should be able to obtain permanent residence and even citizenship. What I object to is the application of a threshold of inclusion that depends on one's life plan.

This argument also holds if we think about the nexus between temporary migrants and sending countries. If we take the life projects of temporary migrants seriously, they must be seen as those having transnational life-plans as emigrants and immigrants. As emigrants, they have an interest in how the government of sending countries is controlled. At the same time, as immigrants, they also have a pressing interest in having their rights protected and promoted in their country of residence. While full enfranchisement in sending countries can address the former but not the latter, the interests of temporary migrants are to be understood not just as those of external citizens but also of non-citizens in the host country, and we should consider how the latter interests of migrants can also be represented in emigration policies.

6.3.2 Democratic Stability and the Need of Collective Demos

A second argument states that the equal inclusion of temporary migrants threatens the democratic stability and intergenerational character of citizenship. Bauböck (2011) illustrates this risk by conjuring up a "hypermigration dystopia," where most residents are non-citizens, and most citizens are non-residents. If all temporary migrants were

included as members of a demos, then "the very preconditions of citizenship as an institution" (Bauböck 2011, 685) would be undermined. While citizens are concerned with the long-term self-government of a polity, insofar as migrants are intentionally temporary, they will focus on their short-term interests. As a result, the inclusion of temporary migrants would transform a democratic polity into "an aggregation of short-term interests and preferences" (Biale 2019). Therefore, the challenge concerns how a balance might be struck between the need for inclusion and democratic stability and continuity.

Stable democratic government requires a relatively stable demos. At this point, it is useful to re-visit Schumpeter's (2006) classic distinction between *producing* and *controlling* a government. For Schumpeter (2006), the primary function of competitive election is not to *control* but to *produce* a government. For the "classic" view of democracy, the primary function of democratic arrangements is to vest the people with the power to choose representatives "who will see to it that that opinion [of the people] is carried out." Yet, Schumpeter reverses this role by arguing that "we now take the view that the role of the people is *to produce a government*, or else an intermediate body which in turn will produce a national executive or government." (emphasis added, Schumpeter, 2006, 269) From this reversed conception, he derived his new conception of the "democratic method," which is the "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (Schumpeter 2006, 269).

Although many democratic theorists have criticised this minimalist view of democracy, I contend that Schumpeter (2006) is right in pointing out the *primary* function of popular voting is to produce a government, namely the locus of decision-making power. Yet, I also think that democracy is not only about producing but also about controlling a government. The point is that there is no need to have perfect congruity between those who *produce* and those who *control* the government. The threshold condition of the government-producing demos should be different from that of the government-controlling demoi.

From a different angle, Pettit (2000) proposes an understanding of democracy as a two-dimensional ideal: authorial and editorial. As Pettit (2000) contends, the authorial people should be a collective (i.e. we need a clear boundary because its task is the act of authorising the government). For authorising the government, the vote should be consistent with the idea of 'one person, one vote.' The need for authorial control is

straightforward: if there is no election, the democratic people do not have a collective power to re-create the composition of the government and decision-makers. However, as many democrats now argue, the democratic process cannot be fully explained by election. We should supplement the authorial control of the government with editorial control through deliberations and contestations (see also Pettit 1999). Such editorial control can be exercised either collectively (i.e. through elections and plebiscites) or pluralistically (through contestations). While we should authorially create the locus of decision-making through election, we should also editorially check and control what that government does in between elections.

A crucial distinction can be drawn between the government-producing demos and government-controlling demoi. Based on PCS, it is justifiable to delimit membership in the government-producing demos to only those whose autonomy is connected with the value of self-government. In this sense, the value of self-government lies indeed in creating and re-creating the government. Since this government-producing decision should be taken collectively, it necessitates a clear boundary between those who are inside and outside. However, for controlling the government, such a clearly bounded collective is not necessarily required because editorial control can be carried out in a pluralistic way; many stakeholder groups or demoi can make various contestatory claims against the government. While Pettit does not discuss the case of temporary migrants, I argued above that PC requires that all those whose interests are bound by the decisions of a government, including temporary migrants, should be able to engage in editorial or contestatory control.

One may worry that expanding editorial control to those who do not form part of the demos may undermine self-government. Yet, the claim made here does not advocate substituting authorial control, but rather supplementing electoral and authorial mechanisms by representing those who are affected and coerced by the decisions of a government. No democratic people can legitimately claim domination over others. To ensure the non-domination of temporary migrants, we should find a good balance between electoral and contestatory mechanisms. While the electoral process of authorisation is necessarily bounded and presupposes a stable demos, the contestatory process is more performative and broader in scope.

6.3.3 Political Equality, Political Freedom

The two reasons against the equal-treatment model discussed so far are consequentialist. Yet, one may still wonder whether I have dismissed a more fundamental issue, namely the intrinsic value of political equality. Certainly, as Seyla Benhabib (2004, 216) argues, the idea that "the people are the author as well as the subject of the laws" has been considered as the prime value of democratic sovereignty. In other words, because my argument states that temporary migrants should be included as "editors" but not as "authors" of the law, the question of whether this approach is in conflict with political equality needs to be addressed.

Although the problems of political inequality are often discussed in contemporary democratic theory, the 'costs' of formal political equality under the equal-treatment model are less considered. To be precise, while the limits of formal equality have been discussed mainly with regard to realising substantive equality *among* enfranchised people, most scholars assumed the formal equality of the vote as the precondition of substantive equality and freedom. The discussion of multiculturalism and feminism have shown that formal political equality does not necessarily result in equal influence and control within a political community. These viewpoints are premised on the argument that special representation or some kinds of affirmative action are needed only among the fully enfranchised citizens.

Accordingly, most scholars usually separate the issue of *demarcating* the demos, namely the identification of membership of the demos, from the issue of *representing* the demos, namely the means by which the central political power is publicly controlled by the same demos. My proposal is simple: why should not we address both issues simultaneously?

There are three problems with the pure equal-treatment model. First, by demarcating a clear boundary for the demos, it assimilates the different intensities and ranges of an individual's stake. To be clear, I do not mean to reject the equal-treatment model. Equal treatment is defensible when a relevant collection of individuals holds a comparable stake in relation to a relevant decision or authority. If the political decision concerns the constitution of a government, a clear boundary must be drawn between those who are inside and outside the demos. However, such a clear boundary is the exception rather than the rule if we take into account different stakes individuals hold. Even if one is excluded

from this scope of demos, it is entirely possible that one holds a certain stake which must be represented in the decision that the government will make.

Second, the equal-treatment model fully excludes those who have a certain but insufficient stake in the democratic process. Let me consider two children, one of whom has passed while the other has not passed the threshold of the voting age just before an election. As a matter of moral competence and knowledge, they are mostly equal. However, just because one was born a bit earlier, the result is a clear discrepancy in voting power between the two. These two children hold the same stake in respect of producing the government. Yet, by drawing a clear age boundary, their voting power disproportionately results in one and zero, respectively. Certainly, such disproportionality is practically inevitable in every act of boundary-making. However, this is why it is important to create complementary or supplementary mechanisms to assure the representation of the interests of those who have a certain stake that is yet insufficient for equal treatment.

Third, many scholars conflate the right to vote and the right to representation (see Cohen 2014). Those who cannot vote or do not vote are not necessarily entirely unrepresented. Those who are denied the vote do not necessarily lose the right to representation. The right to vote is, of course, important, but democratic engagement is broader than the right to vote. This point can be exemplified by the different formulations of the principle of democratic inclusion. Dahl (1970, 64) argues that everyone affected by a governmental decision should have "the right to participate in that government." Goodin (2007, 50) says that all affected persons should "have a say" over a decision. What does it exactly mean to 'participate in that government' and to 'have a say'? If they comport different meanings, the resulting powers acquired by being affected should differ too. This suggests that the acquired power corresponding to one's stake in a decision varies. I contend that these ambiguities imply that there can be a variety of ways of democratic engagement. The problem is that few scholars have examined how we can theoretically and practically accommodate these differences.

6.4 TOWARDS CONTESTATORY DEMOCRATISATION

Full political rights are not required to effectively combat the domination to which temporary migrants are exposed. There are other means to ensure the non-domination of

temporary migrants. Temporary migrants are entitled to be treated as equals, and their domination should be minimised. However, this claim does not imply that temporary migrants should enjoy the same set of political rights and duties as sedentary citizens in both sending and receiving countries. We can distinguish between temporary and sedentary citizens without abandoning the ideals of moral equality and non-domination.

To understand the forms and modes of contestation, we should examine how contestatory channels can be constructed in the political systems, either by being *enabled* through the formal protections of rights or by being *institutionalised* through institutional design with a more or less clear mandate.[16]

Contestations can be enabled if individuals or groups are legally or socially empowered to make various contestatory claims in terms of rights. The basic liberties, such as freedom of speech, freedom of conscience, the right of petition, the freedom of association and so on, ground the availability of individuals' voice in private and public spheres. If these basic liberties are not protected under the law, those individuals lose the legitimate ground for making their claims. Therefore, contestation should be enabled through the entrenchment of these liberties.

A migrant may be able to sue his employer for abuse or exploitation if his right to work is entrenched in the law. And such claims can be integrated into the case law and then may enable legal contestation. Migrants may be enabled to publicise their views through media or blog posts or try to communicate with the spokespersons of labour unions or NGOs. Such social contestations may involve mobilisations for representing their contestatory voices in public. Or, in relation to sending states, lobbying and presenting complaints to the external branches such as OWWA in the Philippines, may indirectly or directly incentivise the state officials to be more responsive to their interests. It is also important to note that the availability of exit options or exit itself also carries contestatory implications. As Mark Warren (2009, 694-696) argues, exit 'signals' complaints or dissatisfaction and thereby incentivises policy-makers to be responsive to the interests of those who might exit. While exit may not promote discursive articulation of discontent, we should not underestimate the democratic implications of exit. In these ways, even

[16] The distinction between enabled and institutionalised forms is drawn from Warren (2011), while his discussion is about exit, not voice.

without specific institutional constructions, there are many ways through which temporary migrants may contest decisions that affect their interests.

The advantage of such enabled contestations is that they are open-ended and provide multiple options. Those who want to contest decisions can consider the options they have and what is the most effective means to make their claims. Insofar as these contestations are grounded and enabled through legal protections and social resources, they may provide ample options for migrants to make various claims.

Yet, such an open-ended approach has significant limitations as well. First, because responsibility is placed on individuals to contest decisions, it is sometimes difficult to discern to what extent a claim is representative of other individuals who are similarly situated. Second, while any contestatory claims may hold some influences over a decision, their effectiveness depends upon how powerful the claim-makers are. Herein lies the problem. If the claim-maker is powerful enough to make an effective contestatory claim, this may devalue or misrepresent those who are relatively powerless. Because their contestations are enabled but not institutionalised, it is not easy to evaluate how the claims of powerful individuals are legitimately generated and the extent to which they speak on behalf of others.

It is argued that the most promising alternative to fully enfranchising migrants is such enabled contestations. For instance, Ottonelli and Torresi (2014) advocate mobilisation through migrant non-governmental organisations, trade unions, and migrant workers organisations as the most plausible alternatives to full enfranchisement. As they illustrate, these organisations have actively worked for the better protection of human rights of temporary migrants. Given that the receiving countries are often reluctant to represent migrants' interests, I admit that these organisations are invaluable for advocating for migrants' rights.

Yet, I doubt whether such informal organisational contestations can effectively address the vulnerability of temporary migrants. As advocacy groups, these organisations make various "representative claims" (Saward 2010) for temporary migrants. However, the question is to what extent these organisations exercise "legitimate representative agency" (Macdonald 2008) with regard to temporary migrants. Migrant organisations and labour unions are organisations with various purposes. Labour unions are unions of workers, not specifically migrant workers. Not all migrants join labour unions; indeed, they are often not permitted to join. The bargaining power of these organisations depend upon the social

structure. Therefore, while these organisations should be considered as important claim-making agents, I do not think that these enabled contestations are enough for fairly representing the claims of temporary migrants.

Apart from such legal and social forms, contestations can be *politically institutionalised* as well. By institutionalised contestation, I refer to an arrangement in which individuals or groups are empowered to make a contestatory claim through specific institutions. Accordingly, such institutions should have a clear purpose and constituency groups towards whom it discharges an institutionally-mandated responsibility. Examples include town meetings, opinion or deliberative polls, ombudsman systems, citizen assemblies, and council systems. The difference between enabled and institutionalised contestation lies in whether the contestation is enacted through an institutional channel.

The existence of institutional structure has many advantages. While enabled contestations are open-ended and voluntary, institutionalised contestation has a publicly-knowable *end*, a *power* to influence a decision, *constituent groups*, and a *selection procedure*. First, institutional contestation has its purpose. For instance, if the government institutes a townhall meeting for policy reform, the purpose of that meeting is set as hearing residents' voices and providing detailed information and arguments for that reform. The issues at stake vary depending on the nature of the problem, e.g. whether it is a temporary or a long-term one. Second, institutionalised contestations hold a certain power. For instance, in the famous example of the British Colombia Citizens' Assembly (BCCA), a body of 160 citizens who were randomly selected was empowered to set a constitutional agenda for the legislative process (On BCCA, see Warren and Pearse 2008). Third, institutionalised contestation has its constituency. The scope of constituency groups varies depending upon the purpose and issues at stake. In the case of BCCA, it was all residents of British Colombia. But the constituency-formation does not need to be defined on a territorial basis. Fourth, institutionalised contestation has a selection process for claim-makers. Selection-processes can be designed in many ways. A government may appoint individuals, or these may put themselves forward, or be randomly chosen, or elected. As many scholars argue, the random-selection or selection by lot has its roots in ancient democracy, and election is not the only democratic way of selection. In any case, having a clear process of authorisation either by appointment or lot connects the constituent groups with a representative claim-maker.

A well-designed institutionalised form of contestation has a greater potential than merely enabled contestation from a democratic perspective. Unlike open-ended mobilisation, a government can institute a plausible contestatory channel for addressing a specific problem related to a constituency group.

It is crucial to note the difference between institutionalised contestatory control and authorial or electoral control over the government. Electoral and authorial control aims to produce *a decision-making body*. Institutionalised contestatory channels, in contrast, are meant to produce *a claim-making body*. The core of contestation is not making a decision but making a *claim* that is to be taken into account in the decision-making process. While temporary migrants do not hold a sufficient stake to be included into the authorial demos, they have a sufficient stake to be able to make contestatory claims against the government. And, importantly, insofar as the contestatory channels are democratically constructed, they accord a democratic legitimacy to the claims, which cannot be attained merely by enabled contestations.

6.5 ENSURING VOICES FOR MIGRANTS

If the institutionalised contestation has such powerful potentials in generating democratically-relevant claims, what kinds of institutional arrangements can be designed to address the vulnerabilities of temporary migrants? The most promising way, I propose, is the creation of *emigrant* and *immigrant councils*, that is, state-level advisory councils composed of emigrant/immigrant representatives selected through a quasi-electoral system with the specific task to represent the interests of emigrants/immigrants.

6.5.1 Representing Migrants Abroad

The first proposal concerns the emigration side of contestations. My proposal is to establish what I call 'emigrant councils', which are composed of selected or elected emigrant representatives with the specific task of representing emigrants' interests in the public policy-making process.

The dominant modes of contestation for sending countries are either enabled contestation through ethnic associations or electoral representation through external voting. On external voting, Peter Spiro (2006, 226) argues that while "assimilated

representation," through which external votes are incorporated into the ballot box of internal votes, would be plausible when emigrant populations are small, "discrete representation" which spares special reserved seats for expatriates, is "generally preferable in so far as nonresident citizen interests are themselves discrete from those of resident voters." Since it is unlikely that under assimilated representation emigrants will elect their own representative in the legislature, the discrete representation may be preferable as a kind of affirmative action for expatriates. However, the extent to which their interests are discrete and whether they justify special representation in the general legislature remains arguable. It is true that external citizens usually have special interests different from domestic citizens, and that they are unlikely to elect their own representatives in the legislature without reserved seats.

The representation of special interests should be balanced against the general interests of the citizenry as well. As Rainer Bauböck (2007, 2433) argues against Spiro (2006), while it is true that emigrants usually have special interests which are not a primary concern of citizens, "these interests hardly justify giving them a right to elect representatives who will vote most of the time on general legislation that does not affect expatriates." Therefore, I also think that "assimilated representation should be the default model" for external voting (Bauböck 2007, 2433). To add one point, to the extent to which the interests of expatriates are special, it is also unclear how many seats are required to fairly represent expatriates who are dispersed all over the world.

Yet, at the same time, it is also true that assimilated legislative representation does not help expatriates claim their special interests in public. For this purpose, I propose that the most promising way would be the creation of an 'emigrant council,' which is a formally empowered advisory body composed of emigrant representatives selected through the quasi-electoral system with a specific task to represent the interests of emigrants.

There are several notable examples of institutionalised contestation. Some European countries have a long history of expatriate representation even before permitting external voting. The oldest case is the Council of the Swiss Abroad (CSA) or commonly called the 'Parliament of the Fifth Switzerland' founded in 1916, which is now composed of 140 members of delegates elected from Swiss expatriates' associations and home representatives elected by the Council. France also has a long history of a state-funded governmental body for expatriates from the High Council of French Citizens Abroad (established in 1948) to the Assembly of French Citizens Abroad (from 2010). Other

examples include Committees of Italians Abroad, the Council of the Portuguese Communities, the World Council of Hellenes Abroad, and the Finnish Expatriate Parliament. These emigrant councils or parliaments have played an indispensable advisory role in justifying governments' emigration policies. A good example is the Finnish Expatriate Parliament, which was a major force behind the toleration of multiple nationalities in the Act of 2003 (De Hart and van Oers 2006, 334).

These expatriate councils are formally empowered advisory bodies managed through an internal democratic mechanism. Importantly, those who have a right to vote in council elections can exercise their right to vote in general elections as well. These institutions function not as alternatives but complementary to the elected legislative bodies in the areas concerning the lives and securities of emigrants, which are difficult to represent through the standard electoral process. As Mark Warren (2013, 283) states, it is thus better to treat such councils as "a supplementary form of representation […] aimed at particular kinds of intractable public problems, or problems for which electoral institutions and other kinds of citizen venues do not generate legitimacy sufficient to solutions."

Representation through emigrant councils has three main advantages compared to discrete legislative representation. First, it enables contestatory representation of emigrants on a much larger scale and more diverse in quality than discrete representation. While in the national legislature the number of reserved seats cannot be separated from the issue of the total size of the diaspora and its proportion to the resident population, this is not the case in emigrant councils. The Assembly of French Citizens Abroad, for example, is now composed of 90 councillors elected by consular advisers (443 in total), and consular advisors themselves are directly elected by universal suffrage of external French citizens in 130 constituencies all over the world. Such scale and diversity of representation cannot be attained through discrete representation. Second, by assigning a role-specific responsibility, emigrant councils can alleviate possible tipping effects in parliamentary votes on general legislative decisions. The specific task of emigrant councils is to advise on and influence political decisions insofar as they affect the interests of external citizens but they do not have a competence in respect of other decisions. Third, such large-scale and role-specific councils give external citizens a promising opportunity to make their representative claims visible in public in a more collective and democratic way than discrete legislative representation.

One possible objection against emigrant councils would be their lack of legislative power. However, even in the case of discrete representation, the number of seats allocated to expatriates should be too small to have agenda-setting power in the legislature. If they could have symbolic agenda-setting power at best, I think that it is more effective and plausible to oblige states and national parliament to hear their advice and provide for review by such councils before passing legislation that affects the interests of external citizens.

Another objection might concern their cost. Certainly, creating something like another de-territorialised democracy would involve a high cost. However, the cost issue is manageable if we ease the selection process. For instance, the Finnish Expatriate Parliament (FEP) adopts an association-based system for selecting the members of the parliament. Each local Finnish organisation needs to ratify the by-laws of the FEP, and then each organisation can send its representatives with voting rights into the plenary session of the Parliament, which is convened every two or three years. Compared to the quasi-electoral model, the association model would be less costly because it does not need a world-wide election for selecting members of the council. A possible risk of the association model is that it may not be able to represent those emigrants without associations and would give a stronger voice to active diaspora communities. Setting the issue of cost aside, I thus believe that the quasi-electoral council is generally preferable to the association model because it assures higher levels of authorisation, contestation, and egalitarian inclusiveness.

The final objection is about its effectiveness, especially regarding temporary migrants. For example, consider if Mexico were to establish an emigrant council representing all Mexican emigrants. In this case, those who fall within a category of temporary migrant workers would constitute a small minority among the larger groups of Mexican emigrants. If the majority of its constituency are long-term emigrants, how can the interests of temporary migrants be effectively represented? This is a serious challenge, and I do not have a simple answer. However, I contend that the appropriate division of constituencies should vary depending on the composition and circumstances of overseas populations. I do not argue temporary emigrants should be *prioritised* vis-à-vis long-term emigrants. Rather, I argue that all emigrants should be able to have a contestatory power insofar as they are subjected to the coercive power of their sending country. The point is not so much the chance of temporary emigrants to *elect* their own representatives as that to *contest*

the claims and decisions made by the representatives. Even though temporary migrants cannot elect their own representatives, they can raise their voices if a person in charge of temporary migration is appointed to the council. The limited decision-making power of the council system gives it the flexibility to structure the composition and roles of representatives.

Overall, the merit of the emigrant council system is that it creates another democratic system for representing external citizens, albeit limited in its legislative power. In so far as it is managed through an in-built democratic system, it can incorporate the good practical and intellectual heritages of representative governments. Emigrant representatives are authorised to be representative through election if access to the representation process is equally open to all emigrants, and the represented emigrants may engage in contestation against decisions unaccountable to them. I thus believe that the advisory council model is the most promising way to enable democratic representation of emigrants.

6.5.2 Representing Non-Citizen Residents

For the immigration side, my proposal is to create a state-level advisory council for immigrants or 'immigrant council.' This proposal thus mirrors that for emigrants: an advisory council composed of non-citizen representatives selected through the quasi-electoral system with a specific task to represent the interests of immigrants. This may seem more radical than emigrant councils because no state currently has a national-level council system. As with emigrant councils, I do not think that immigrant councils need to hold decision-making or legislative power. Their task shall be specific and limited to representing the interests of immigrants, and the state shall be responsible for hearing their claims and reviewing them when legislating decisions that affect immigrants' interests.

There are many examples of immigrant councils at the local level.[17] For example, many German cities have *Foreigners' Advisory Council*. Members of councils are often directly elected by foreign residents, and they are held responsible for advising local administrative bodies on the issues affecting the non-German residents and entitled to

[17] For an overview, see Gsir and Martiniello (2004).

make proposals. In Japan, the Kawasaki city installed *Representative Assembly for Foreign Residents* in 1996. The representatives of this assembly are composed of publicly recruited foreign residents in Kawasaki (26 at maximum), and they are held responsible to all foreign residents in that city. While it does not have any decision-making power, it has so far submitted 47 concrete proposals to the city mayor, and several of those became institutionalised, including the instalment of foreigner assistance office and residential support for foreigners.

Several countries have immigrant councils at the national level.[18] For instance, Denmark has the *Council for Ethnic Minorities*. This Council is composed of 14 members with ethnic minority backgrounds, representing the local immigration councils from which they are elected. While the Council has no formal power to engage in the legislative process, its members can participate in government working groups and consult the Minister of Integration. Such a national level council is a good step forward. The reason is that, while local governments play an important role in representing migrants' interests, the overall framework regulating immigration and related legislations are mostly decided at the national level. I do not deny the possibility that the local representation of immigrants may affect and control national legislation to some extent. However, under current conditions, national governments have little obligation to represent the immigrant population in legislative decisions even if those significantly affect the interests of immigrants.

Immigrant councils at the national level have several advantages compared to other alternatives. Here I discuss three alternatives: (1) full enfranchisement of immigrants, (2) discrete legislative representation, and (3) enabled contestation. The first alternative, full enfranchisement of immigrants, is not only unrealistic but also has significant drawbacks. As I argued, there are good reasons for treating immigrants as a special category because of states' overlapping responsibility structure. The mere inclusion of immigrants into the national citizenry cannot take their transnational interests into account. While it is plausible to fully enfranchise long-term or permanent resident whose centre of life is firmly located in the host state, fully enfranchising even temporary migrants would have a detrimental effect on democratic stability.

[18] For an overview, see Council of Europe (1999) and Huddleston (2010).

The second option is a discrete legislative representation of immigrants, which means to give non-citizens some reserved seats in the national legislature. The concerns about discrete emigrant representation discussed above would also apply to this proposal. Firstly, the number of reserved seats would be too small to yield agenda-setting power. Secondly, in so far as the purpose is to represent the special interests of immigrants qua immigrants, it seems problematic to give them decision-making power over general legislation. One could argue that, unlike emigrants, immigrants live in the same territory as sedentary citizens, and giving them legislative power over general matters may be justified. However, in so far as their interests are general enough and thus similar to those of citizens, the reason for special representation becomes unclear. While I do think that some long-term immigrant groups that have suffered historical injustice, such as the Korean minority in Japan, might be legitimately given some affirmative representation in the national legislature, I do not find any convincing ground for discrete legislative representation for *all* immigrants. Third, in so far as the number of seats is limited, it is highly questionable whether immigrant representatives can fairly represent the interests of immigrants, which are incredibly diverse when taking into account their various origins as well as their social and legal statuses.

The third option is a representation through non-governmental organisations, such as migrant advocacy groups, trade unions and migrant workers organisations. This is what Ottonelli and Torresi (2014) advocate. While I do not deny that these associations and organisations may help to articulate the claims of migrants, I think that there are some concerns left. First, the scope of interests covered by these organisations is still limited. Considering the decrease in the overall rates of unionisation and limited capacity of migrants to unionise, I am sceptical about the possibility that unions can effectively make representative claims covering all immigrants. The same thing can be said of NGOs and migrant advocacy groups. The key question is whether these associations can establish what Terry Macdonald (2008) calls "legitimate representative agency." If we adopt the association model for immigrant councils, these associations will play an important role in collaboration with other immigrant associations. However, the preferable model for the immigrant council is not the association model but the quasi-election model because the latter enables a more democratic process of authorisation, contestation, and egalitarian inclusiveness than the former.

Four possible objections might be raised against national-level immigrant councils. First, they might disincentivise immigrants from naturalising. Certainly, some immigrants may be happy to be represented as immigrants in the council, not as full citizens in the legislature. This might impede the political integration of immigrants into the host society. This kind of concern has been repeatedly raised about a status of "denizenship" (Hammar 1990) that grants quasi-citizenship rights to settled immigrants. However, what is paradoxical about this argument is that it tries to achieve equal inclusion of immigrants by excluding immigrant non-citizens from the enjoyment of rights, most notably political rights. If the purpose is to redress the injustice of their disenfranchisement, naturalisation is one way, but not the only way, to resolve the problem. Moreover, there are contestable empirical assumptions behind the argument. By engaging in quasi-democratic activity through the immigrant council, migrants may rather be incentivised to become equal citizens in order to acquire full political freedom. Before having tested the effect of national immigrant councils on naturalisations, such an optimistic scenario cannot be dismissed.

The second objection is about costs. However, this issue would be less pressing compared to emigrant councils. Because the immigrant council is established in the host state jurisdiction, there are no significant hurdles for campaigning and informing migrants about council elections. As with existing emigrant councils, most representatives are expected to work voluntarily without paid benefits. Having a general legislative election and council election at the same time, for instance, would significantly reduce the possible costs of electing immigrant councillors because it just means counting the ballots in separate boxes for different representatives.

The third objection is about the effectivity of immigrant councils. It is true that because the immigrant council would have no legislative power, the influence on state policies might be somewhat limited. However, effective representation does not necessarily mean that an individual's or group's desired policy proposals are successfully implemented. The crucial issue here is not to give councils a veto power but to enable the contestatory power of immigrants (see Pettit 1999). Even if their proposals are not directly transposed into a law, representative claims are made and accepted by migrants and citizens. This fact is important. Again, the task of the immigrant council is to articulate the legitimate representative claims of immigrants. Rather than flinching at their claims, why not

opening such democratic channel to immigrants? In a comparative study on consultative bodies for immigrants in Europe, Han Entzinger (1999) notes this point:

> Consultation, apparently, is seen as an important additional element in the integration process, rather than as a 'second best' where voting and citizenship rights are lacking. Countries with well-developed consultation mechanisms see immigrants not only as (potential) fellow citizens, but also as groups of people with special interests and demands, that should be voiced to the authorities in a systematic rather than a haphazard manner (Entzinger 1999, 188).

The fourth objection is similar to that raised to emigrant council. How can the interests of temporary migrants be sufficiently represented, if they constitute just a small minority among all immigrant population? Certainly, as temporary migrants do not constitute a 'group' which shares an identity, they cannot have 'their' representatives. However, as I argued in the case of emigrant councils, the point is not so much their chance to *elect* their own representatives as that to *contest* the claims and decisions made by the representatives. Therefore, I believe that this problem can be resolved by appointing claim-makers among representatives in charge of temporary migrants, institutionalising the representational relationship between claim-makers and temporary migrants.

If these arguments are sound, establishing national-level immigrant councils is the most promising way to address the vulnerability of migrants, which enables immigrants to act not as passive recipients but as active subjects in criticising and justifying the current arrangement.

6.5.3 Transnational Representation of Migrants?

The two proposals adumbrated above are made from a single-country perspective. In other words, they outline the contestatory channels instituted by either sending or receiving countries. Yet, if we take into account the actual agency of temporary migrants, whose autonomy is conditioned in-between two states, it might be plausible to institute transnational contestatory mechanisms.

Institutionalising a transnational council is not without objections. While single-country-based councils can represent all emigrants and immigrants for the respective country, transnational ones are necessarily selective. For example, a U.S.-Mexican council would represent a large proportion of all immigrants in the U.S. and emigrants from Mexico, but only a very small number of immigrants in Mexico (since most are from

Central America rather than the U.S.). More generally, the problem is that migration flows are very rarely reciprocal and institutionalised contestation based on reciprocity may be seen as treating migrants unequally in problematic ways. Moreover, if we focus on the representation of temporary migrants, the problem gets doubly complicated, as they do not constitute a group in both Mexico and the U.S. Therefore, creating transnational councils are easier said than done.

Therefore, I contend that we should first institutionalise the single-country-based councils, and then attempt to foster transnational engagements between them. Imagine that sending and receiving states establish emigrant and immigrant councils. Migrants moving from one state to the other will have a chance to engage in both councils. Let us assume that X is an inclusive emigration state and Y is an inclusive immigration state. A finds his interests as an emigrant are well represented in sending country X but his interests as an immigrant is poorly represented in receiving country Y. B finds his interests as an emigrant are not well represented in sending country Y but are well represented in receiving country X. The effect of A and B making their claims in the respective immigrant and emigrant councils could be a more balanced and reciprocity-based representation of both emigrants and immigrants in both X and Y.

I believe that this is the future direction of transnational contestatory democratisation. In this story, A and B together notice how these representative structures are unfairly imposed on them, and actively engage in the representative claim-making processes together with other fellow migrants. They are not mere recipients of state responsibility but active subjects of political autonomy. Of course, not all migrants would engage in such activities. However, against the backdrop of official systems, they could see and understand the nature of their situation and had a chance to show their consent to, or contestation of, the current arrangements. While such a vison is highly speculative, I believe that this is the most plausible and democratic way to achieve better responsibility-sharing between sending and receiving countries. My claim is simple. If there can be no magical formula for responsibility-sharing, why not let migrants, whose lives are constrained by this overlapping structure, play an important role in testing its justifiability? Even if they lack legislative power, it is migrants themselves who should be able to justify and criticise the current structure. And in so far as such a structure is transnationally imposed, they should be able to play a role in justifying the current

arrangement both for sending and receiving states. Emigrant and immigrant councils are the best way to pursue this path.

6.6 CONCLUSION

In this chapter, I have made three claims. First, I have argued that three principles of democratic inclusion can be re-interpreted as grounds for differentiated democratic entitlements. If one's interests are affected by a policy decision, one is entitled to discursive representation; if one is subjected to coercive government, one is entitled to editorial representation; it is only if one's autonomy and well-being are linked to the self-government and flourishing of a polity, one is entitled to authorial and electoral representation.

Applying such a pluralist framework reveals the need for differentiated citizenship for temporary migrants. I have considered possible objections to such differential treatment and rejected the equal-treatment model on three different grounds. First, it cannot effectively address the vulnerability of temporary migrants. Second, it may undermine the good of stable democratic government, Third, it reduces the value of political equality to a mere procedural equality.

Based on this case for differentiated citizenship, I examined the possible modes of contestation through which temporary migrants would make their voice heard in public for (de)legitimising citizenship and migration policies in both countries. I argued that institutionalised contestation is preferable to enabled contestation and that contestations regarding the interests of temporary migrants can be best realised by state-level advisory council systems, which I called immigrant and emigrant councils.

If temporary migrants are empowered to raise their contestatory voices over migration policies, they can act not as mere recipients of rights but as active subjects of democratic autonomy and thus avoid domination. The legitimacy of migration and citizenship policies hinges upon the democratic agencies of temporary migrants enacted in-between sending and receiving countries. To conclude, if temporary migration is to be legitimate, sending and receiving countries must institutionalise contestatory channels through which temporary migrants can participate in the legitimation process.

Chapter 7: Towards the Responsibility to Represent

INTRODUCTION

The last two chapters addressed two main sources of vulnerability from a migrant perspective. In Chapter 5, I argued that temporary migrants should enjoy necessary protections and sufficient resources to carry out their distinct life plans under the intergovernmental structure of states. Chapter 6 argued how temporary migrants might make their claims visible in public to (de-)legitimise current arrangements, advocating for institutionalised contestation through special claim-making bodies. In doing so, I have tried to explore the moral and political bases of temporary migrants' freedom and transnational citizenship.

Against this backdrop, this chapter changes focus from migrants to states and answers the primary question of this thesis: *What responsibilities should states bear towards temporary migrants within and beyond their jurisdictions?*

I will answer this question by establishing a threefold framework of state responsibility in relation to international migration, namely, Responsibility to Protect (R2P), Responsibility to Care (R2C), and Responsibility to Represent (R2R). While R2P is already used in the field of international law, R2C and R2R are concepts that I am now introducing in order to understand transnational state responsibility towards international migrants. Once depicting how the three responsibilities interact in securing the freedom of temporary migrants, I will underline how R2R plays a crucial role in justifying and legitimising migration and citizenship policies for both sedentary and temporary individuals and, importantly, how my approach contributes to the realisation of non-domination. I argue, in particular, that R2R is crucial not only for protecting migrants from domination, but also for enhancing the transnational democratic credibility of citizenship and migration policies. R2R not only enables the representation of migrants' interests in their rights and needs but also represent their opinions about the common good of a polity, creating the sources of trust between temporary migrants and sedentary citizens.

I examine, additionally, the possible limits of state responsibilities. First, state responsibility should not allow one state to dominate or impose unfair burdens on other

states. Second, the justifiability of state intervention should be evaluated in relation to the ideal of non-domination, that is, a state cannot justify interfering with another state merely on grounds of pursuing their self-interests. We should attempt to secure non-domination between states, as well as non-domination between temporary and sedentary citizens. Within these limits, migrant citizenship and transnational responsibility can play a valuable and indispensable role within a broader theory of international justice.

7.1 THE CONCEPT OF RESPONSIBILITY

Responsibility is a notoriously multifaceted concept. It is sometimes used as a synonym for obligation, duty, liability, to name but a few concepts. Because responsibility is an "essentially contested concept" (Gallie, 1956), I do not aim to provide a new systemic and definitive account of the conceptual field. I will instead develop a working concept of responsibility.

Robert Goodin (1995) offers a good starting point to understand the prescription of responsibility. Goodin (1995, 82) understands responsibility and duty as a prescription of the general formula:

A ought to see to it that X.

A refers to some agents, and X is a (desirable) state of affair to be obtained. The difference between duty and responsibility lies in whether the X clause prescribes some specific actions. For duties, the X clause prescribes what A does or refrains from doing *p.* For responsibilities, in contrast, the X clause does not refer to *p*. When a mother tells her son to 'clean your room', she spells out a duty, since she prescribes what action one shall take. However, if she tells her son to 'keep your room clean', she creates a responsibility because he may take other actions like hiring someone to keep his room clean. What he should do is to see to it that his room is kept clean.

As Goodin (1995) suggests, to discharge a responsibility, it is not enough that X merely occurs. An agent shall *see to it* that X is brought about. Goodin (1995) specifies this "see to it" requirement as forming "self-supervisory activities," which require:

> minimally, that A satisfy himself that there is some process (mechanism or activity) at work whereby X will be brought about; that A check, from time to time, to make sure that that process is still at work, and is performing as expected; and that A take steps as necessary to alter or replace processes that no longer seem likely to bring about X (Goodin 1995, 83).

Discharging responsibility thus means to *undertake one's self-supervisory activities to see to it that a certain state of affairs is brought about*.

This conception of responsibility is referred to as task responsibility (Goodin 1995). For this conception, responsibility is understood as carrying out a specific *task* which is morally or politically assigned to a specific agent. Such a task will be assigned to an agent in various ways. When an individual makes a contract with his business partner, it is his task to comply with the contract. While liberal or legal theories of responsibility view one's "previous voluntary actions" (Hart 1955, 185) as the only source of task responsibility, Goodin (1985) explored its broader basis. He argues that the voluntary model is too narrow to explain all special responsibilities. We intuitively acknowledge that we bear some special responsibilities towards specific others, such as families, friends, clients, compatriots, and so forth. Goodin (1985, 39) believes that "it is vulnerability rather than some voluntary act of will which gives rise to special responsibilities of the most basic kind." Rather, "duties and responsibilities are not necessarily (or even characteristically) things that you deserve. More often than not, they are things that *just happen to you*" (emphasis added, Goodin 1985, 133).

When a responsible agent fails to carry out his task, he may be morally or politically blamed for his failure. Task responsibility is thus connected to its counterpart, blame responsibility. While most philosophical literature about responsibility has focused on allocating blame to someone, task responsibility is foundational to allocating blame, because we cannot blame someone if he or she has not been assigned any tasks. Tasks define what needs to be seen to, and, if one fails, the blame will be pointed at one.

In this chapter, I use the term responsibility in the sense of task responsibility. But this focus should not be read as denying the importance of blame responsibility. Blame responsibility or liability plays an important role, especially when there is a clear causal relationship between harms caused and the agent's wrongdoing. However, to understand state responsibilities towards migrants, blame responsibility has quite limited applicability. When an employer exploits and oppresses migrant workers by breaching labour law, the employer shall be blamed. However, to reduce the overall injustice

towards migrant workers, punishing bad employers has limited impact because migrant worker exploitation and oppression is structural in nature. What needs to be seen to, so to speak, is not only the punishment of an employer, but the identification of, and changes to, the background structures that make migrant workers needy and dependent in the first place. Iris Marion Young (2011) explains why blame responsibility, or what she calls the "liability model" of responsibility, is inadequate when we deal with "structural injustice":

> The primary reason that the liability model does not apply to issues of structural injustice is that structures are produced and reproduced by large numbers of people acting according to normally accepted rules and practices, and it is in the nature of such structural processes that their potentially harmful effects cannot be traced directly to any particular contributors to the process (Young 2011, 100).

I thus think it is more constructive not to ask "whodunit?" but "who has been assigned what tasks?"

What tasks, then, have been assigned to states? I distinguish here between national and state responsibility. When states are held responsible for their actions, they are often conceived as an agent acting on behalf of its people or nation.[19] I do not deny the possibility and justifiability of national responsibility under certain conditions, I simply assume that state responsibility is not identical to national responsibility. However, one may wonder if, by focusing on state responsibility, I may lose sight of various social actors, including the national community. By putting the focus on states, am I justifying the excuse of "It's not my job—it's the government's job" (Young 2011, 169)?

I focus on states because the excuse of "It's not my job" involves a coordination problem which can only be resolved collectively, mainly by state intervention. As Goodin (1995, 44) argues, the state is the main agent which has "the duty to organize – and the power to enforce, as necessary – various sorts of coordination schemes to aid its citizens in discharging their individual (albeit imperfect) moral duties." One of the main tasks of the states, in this context, is to assign appropriate shares of responsibilities to individuals or groups, often through the uses of coercive powers. The state is needed not so that other actors can avoid their responsibility, but rather so that each actor is assigned their proper share of responsibility towards others.

[19] For the defence of national responsibility rather than state responsibility, see Miller (2007).

I thus understand that the responsibility of states is basically *to implement a scheme of coordination that makes sure that responsibilities are legally, socially and politically shared in such a way that some desirable states of affairs is brought about*. In what follows, the 'desirable states of affairs' refer to non-domination.

7.2 THREE MODES OF STATE RESPONSIBILITY

The responsibility of states towards international migrants shall be further specified to analyse how they interact and overlap. I suggest that it is useful to distinguish three modes of state responsibility: responsibility to protect (R2P), responsibility to care (R2C), and responsibility to represent (R2R). All these modes play vital roles for realising non-domination. R2P and R2C are concerned with non-vitiation, while R2R pertains to non-invasion. It is only when these three responsibilities are transnationally discharged, by both sending and receiving countries, that temporary migrants can enjoy freedom as non-domination.

7.2.1 Responsibility to Protect

The first mode is R2P. I define R2P as *the responsibility of states to implement a scheme of coordination that ensures that the basic needs of individuals are legally protected.* Although the term R2P is used in the field of international law, my conceptualisation is generic. It underlines the need to protect the human rights of both immigrants and emigrants under a reliable legal mechanism.

R2P is primarily a *legal* mode of state responsibility. The level of responsibility will be assessed through how the basic needs and capacities of individuals are protected under the purview of state laws. The key for R2P is whether individuals can ground their claim in a concrete legal framework as a matter of rights and, in turn, oblige the states to protect them as a matter of their legal responsibility. As such, R2P defines the overall arrangement of state responsibility in relation to individuals.

R2P requires an effective legal system for protecting the needs of individuals. For this reason, R2P has a deeper resonance with the ethics of justice and rights, especially when compared to R2C, which resonates with the ethics of care. Under R2P, a person's identified interests shall be protected because this is their right in the light of justice.

The value of R2P is that it can ground basic, and perhaps universal, needs in terms of legal rights. If someone's needs are insufficiently protected, they can claim their satisfaction as a matter of legal right. If parents are insufficiently resourced to protect the needs of their children, states should take a responsible action, either by resourcing those parents or by protecting children on their behalf. The strength of R2P is that it works well if needs are well-articulated and generalisable.

However, in relation to the other two modes, R2P brings a risk. To be effective, R2P requires clearly articulated impartial needs backed up by an effective legal system. However, true interests are not always clear. Margaret Walker (2007, 89) points out: "is it really 'obvious' who just 'is' responsible for a child's well-being? Is the bar of minimal well-being really set independently of practices which determine who will in fact or who must respond?" Therefore, if needs or interests are insufficiently articulated, this inevitably allows larger state discretion and, in turn, may heighten vulnerability and dependence.

To summarise, the advantage of R2P is that it may define a clear and enforceable mandate for the responsible agent and that it grounds the claims of individuals as a matter of legal right. The risk of R2P is that, if the interests at stake are not clearly or impartially articulated, the agent may fail to reflect upon and protect these real needs.

While all states have their R2P provisions, both for immigrants and emigrants, their scopes and ranges vary significantly. The formal levels of protection enjoyed by migrants under international treaties and national constitutions differ significantly too. Since the overall levels of protection of migrants depends on a combination of responsibilities assumed by states of residence and origin, the chances for sufficient protection of all vulnerable migrants is rather low.

For inward R2P for immigrants, the minimum standard is to protect the human rights of migrants stipulated in the main international treaties or receiving states' constitutions. The main treaties or charters related to R2P include: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD 1965); the International Covenant on Civil and Political Rights (ICCPR 1966); the International Covenant on Economic, Social, and Cultural Rights (ICESCR 1966); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW 1979); ILO's Migration of Employment Convention (1949); its supplementary Migrant Workers Convention (1975); and the International Convention on the Protection of the Rights of All Migrant Workers

and Members of Their Families (ICRMW 1990); The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2003). In addition to these international treaties, other domestic provisions, such as anti-discrimination laws and constitutional protections, are also included in the assessment of R2P. Most liberal democratic states generally have a higher level of inward R2P, although most of them have not ratified the ICRMW. While the major emigration states have ratified the ICRMW, these rules are often not well-incorporated domestically.

The outward R2P for emigrants has been traditionally analysed in terms of diplomatic and consular protection. Indeed, the concept of state responsibility itself is rooted in this manner. Nonetheless, new forms of outward R2P have been developed. For instance, the Philippines enacted *the Migrant Workers and Overseas Filipinos Act of 1995*, usually referred to as the *Magna Carta for Migrant Workers*. The 1995 Act stipulates a comprehensive set of migrants' rights and corresponding objectives to be achieved by the Executive. Although many objectives in this Act have not been fulfilled, mainly because of jurisdictional limits, the important point is that it directly grounds the scopes and ranges of external citizens' claims under domestic law.

While the above examples of R2P are mainly rooted in international legal norms or the domestic legal order of individual countries, in some cases R2P can take on a transnational form through regional or bilateral treaties. The EU has the most advanced system of transnational R2P through the European Union Treaty supplemented by the legal interpretation of the Court of Justice of the European Union. EU citizens migrating within the EU enjoy free movement and are comprehensively protected against discrimination on grounds of their nationality. Moreover, any EU citizen in a non-EU country is now entitled to subsidiary protection by the diplomatic or consular authorities of any other EU country. Such regional cooperation is also found in ASEAN or MERCOSUR; in these cases, the basic protection of citizens from contracting states migrating to others is transnationally standardised. It can also be carried out bi-nationally. For example, in 2013, the Philippines and Indonesia made a joint declaration to strengthen their cooperation in the promotion and protection of the rights of migrants, which includes mutual diplomatic and consular missions for both documented and undocumented migrants.

In these ways, inward and outward R2Ps ground *the basic needs of individuals* to be protected under the purview of state law.

7.2.2 Responsibility to Care

The second mode is R2C, which is defined as *the responsibility of states to implement a scheme of coordination that will ensure that the basic needs and capabilities of individuals are socially cared for.* R2C is a *social* mode of state responsibility. While R2P grounds and defines the basic capabilities to be protected, states cannot fulfil their basic responsibility only by R2P, because R2P is about the legal relationship between states and individuals. While the basic capabilities under R2P are impartial and agent-neutral, such capabilities should not only be protected, but also be effectively resourced and cared for through various policies.

R2C is a secondary responsibility of the state in the sense that those who take and share this responsibility are not necessarily the states themselves, but other social actors, such as local or municipal governments or special government branches, markets, civil society or third sector organisations. It is their responsibility to provide good care for others. In this sense, states should allocate adequate resources and opportunities to individuals and caregiving organisations and ensure that the needs or interests of recipients are met in the relevant context.

While R2P concerns legal rights and protection of individuals, R2C relates to social care and resourcing necessary to meet the basic needs and interests of individuals. R2C obliges states to see to it that the social allocation of responsibilities is arranged so that each person is resourced in a way that they can exercise their functional capacities over a suitable range of choices. It is a basic responsibility that each child receives an education. Looked at from an R2P perspective, a state should ensure that each child has access to basic education. However, it is enough that this responsibility falls on states. From a R2C perspective, each state should ensure that the many social actors, such as parents, teachers, PTAs and public as well as private schools, share this responsibility. The proper level of basic education cannot be detached from actual social practices.

Berenice Fisher and Joan Tronto (1990, 40) defined care as "a species activity that includes everything that we do to maintain, continue, and repair our 'world' so that we can live in it as well as possible." Care derives its value from the moral requirements that human beings are inherently relational and dependent on each other which necessitates care (see also Slote 2007; Held 2007; Engster and Hamington 2015).

For R2P, the relationships between state and individuals are often one-directional. However, for R2C, the relationships are multi-directional and require that various social

actors fulfil their own self-supervisory activities. Tronto (2013, 22–23) systematises such requirements or virtues of care as a four-stage process: "1. Caring about. At this first phase of care, someone or some group notices unmet caring needs. 2. Caring for. Once needs are identified, someone or some group has to take responsibility to make certain that these needs are met. 3. Care-giving. The third phase of caring requires that the actual care-giving work be done. 4. Care-receiving. Once care work is done, there will be a response from the person, thing, group, animal plant, or environment that has been cared for. Observing that response and making judgments about it […] is the fourth phase of care.'" In short, through R2C, the states shall assign these tasks to caregivers and provide sufficient resources for them to fulfil their responsibilities.

The value of caring is clear. R2P mandates to protect the impartial needs through an effective legal system. However, if the articulation of such needs is inadequate, a responsibility bearer may run a risk of mis-identifying the true interests and, consequently, may fail to protect them. In contrast, R2C takes this mis-identification risk seriously. For this reason, R2C seems a necessary complement to R2P.

However, R2C may be conflict with R2P. The serious challenge is how to reconcile the dilemma between justice and care or universality and particularity. The ethics of care have often been depicted as an alternative to, not as a complement of, justice, including conventional moral theories like Kantian deontological ethics and consequentialist utilitarianism. Carol Gilligan (1983), one of the pioneers of care ethics, made a solid contrast between the "morality of rights" and "morality of care". Virginia Held (2007) also draws a stark contrast between an ethics of justice and of care:

> An ethic of justice focuses on questions of fairness, equality, individual rights, abstract principles, and the consistent application of them. An ethic of care focuses on attentiveness, trust, responsiveness to need, narrative nuance, and cultivating caring relations. Whereas an ethic of justice seeks a fair solution between competing individual interests and rights, an ethic of care sees the interests of carers and cared-for as importantly intertwined rather than as simply competing. Whereas justice protects equality and freedom, care fosters social bonds and cooperation (2007, 15).

Fiona Robinson (1999, 110) argues that "caring for others means not only meeting their needs but also working to identify and change social institutions that make individuals needy and dependent in the first place." Robinson asserts that conventional normative theories put too much focus on justice in terms of rights and obligations. For

her, the problem with these theories is their tendency to promote "a depersonalized, distancing attitude toward others" that distorts "the real contexts of relationships among particular persons" (Robinson 1999, 8, 37–42). Margaret Walker (2007) also argues that the "theoretical-juridical model", which is in line with R2P, is flawed. For her, the only way to avoid the biases of the "theoretical-juridical model" is to engage in the "expressive-collaborative model," valuing negotiated understandings and cooperative engagements. For these scholars, the value of care is in conflict with the value of justice, even if the two need not be diametrically opposed.

These potential conflicts exemplify the risk of R2C. While it may serve to identify and meet real needs, the justification is particularised and contextual. The flipside of this particularity and contextuality is that it may run a risk of detaching the value of caring from a public and impartial justification. While R2P draws its justification from the universality and impartiality of the protected interests, R2C stresses the particularity and partiality of real needs, which cannot be cared for without an actual relationship. Formalistically, R2P champions the ethics of justice, while R2C is based on the ethics of care. Certainly, scholars have different understandings about the relationship between justice and care. For instance, Sara Ruddick (1995, 217) argues that "justice is always seen in tandem with care" and, hence, these values are not in conflict but may be integrated, while Daniel Engster (2007) grounds the needs of care in more universalised and impartial terms. If we follow these lines, there may not be a serious conflict between the two.

My view is similar to that of Held (2007, 17), who notes that it would be better "to keep these concepts conceptually distinct and to delineate the domains in which they should have priority." I do not think that the values of justice and care can be perfectly merged. At the same time, both values are not inherently in conflict. I recognise this potential conflict as real: while a good caring relationship helps to identify the true needs of the vulnerable, it also gives the bearer certain discretion over the vulnerable. The primary risk of R2C is that it may run out of *public justification* by putting too much emphasis on particularity and context.

Tronto (2013, 23) recently added an important fifth step to the caring process that she terms "caring with", that is, 'caring needs and the ways in which they are met need to be consistent with democratic commitments to justice, equality, and freedom for all." As she warns, mainstream care theorists have sometimes dismissed the need for public

justification. I agree with the argument that justice theorists have neglected or privatised the universal needs of care. However, what we need is not to erase the boundary between private and public, or particular and universal, but reconfigure the proper domains which connect them in a democratic way. Importantly, this is indeed the primary virtue of the third mode of state responsibility, the responsibility to represent.

There are numerous possible configurations of R2C. For inward R2C, for example, the United States has a more privatised mode of R2C. Various social services and benefits are not directly provided by the government but mainly through markets or third-sector organisations, or families. This mode of R2C is quite different from that in Sweden, for example, where governmental organisations and public services play a key role in discharging R2C.

For outward R2C, there has in recent years been also a notable change in the scope and range of supports. It has been well-documented in sociological research that many labour-exporting countries provide social services and benefits to emigrants. For example, the Mexican government created the *Institute of Mexicans Abroad*, which provides for an array of civic, health, education and financial services through its programmes (see Fitzgerald 2009; Délano 2011). The Philippines has numerous governmental branches such as *Philippine Overseas Employment Administration* (POEA) and *Overseas Workers Welfare Administration* (OWWA) to name but a few, which work in coordination with third-sector organisations (Romina Guevarra 2006; Rodriguez 2010). Such outward R2C covers both pre- and post-departure stages by providing for linguistic and skills training, consular and legal assistance in the home state, work authorisation by private agencies measured aimed at preventing trafficking, and so forth. One important dimension of outward R2C is the balance between private and public institutions in emigration processes. As I argued in Chapter 5, in some states private brokering agencies still have the power to select would-be emigrants, while in others private brokerage is strictly regulated by governments.

R2C is also increasingly transnationalised. Peggy Levitt and others proposed and explored the new notion of "transnational social protections", which draws attention to 'policies, programmes, people, organizations and institutions which provide for and protect individuals […] in a transnational manner' (Levitt et al. 2017). For them, individuals' "resource environment" is increasingly constituted in a transnational manner depending on the combination of the possible care and protections available.

7.2.3 Responsibility to Represent

The third mode is R2R. I define R2R as *the responsibility of states to implement a scheme of coordination that enables the claims of individuals to be politically represented*. R2R is a *political* mode of state responsibility. While R2P and R2C stand for the arrangement of legal protections and social resourcing, R2R concerns political representation and democratic citizenship. In particular, R2R provides migrants with voice and agency in a way that R2P and R2C do not and it treats them as autonomous subjects whose claims have to be taken into account in democratic decision-making.

Representation is also a multifaceted concept with multiple meanings. One of the most important shifts in the recent literature on representation, the so-called "constructivist turn" (see Disch 2015), emphasises how representatives play an important role in creating and framing the claims of those whom they seek to represent. Traditionally, representation has been understood formally and, as such, the main task was to find out how the relevant institutional mechanism confers authorisation and accountability between the representatives and represented (see Urbinati and Warren 2008). However, more recently, representation has been conceived of as a more dynamic process of "claim-making," stressing the performative rather than the institutional side of representation (Saward 2010). Following Michael Saward (2010), I understand representation as a creative and performative process of public claim-making and claim-receiving.

While such an understanding of representation is broader than election-based representation, its scope is narrower than that of mainstream consructivist theories. I distinguish, more precisely, political and democratic representation. Political representation occurs when a claimant (e.g., a leader of a labour union) submits a claim on behalf of his constituency (e.g., members of a labour union), and his claim is accepted as a representative claim by an audience (e.g., state officials). However, for a representative claim to be democratic, it requires more from its constituencies: *authorisation*, *contestation*, and *egalitarian inclusiveness* (see Warren 2013). This means, that, in order to establish a democratic representative agency, a claimant will be in some sense *authorised* by his would-be constituency (authorisation); the would-be constituency will have opportunities to form *contestatory* voices to make the representative claims accountable (contestation); and such would-be constituency shall

be *equally included* in this process of authorisation and contestation in so far as their claims are directed towards them (egalitarian inclusiveness).

Democratic representation enhances the legitimacy of political representation because otherwise a representative may misrepresent the true interest of the represented. However, the ultimate goal is not to make the claim of the representative identical to the claims of the represented. As Saward (2006) argues:

> No would-be representative can fully achieve 'representation,' or be fully representative. Facts may be facts, but claims are contestable and contested; there is no claim to be representative of a certain group that does not leave space for its contestation or rejection by the would-be audience or constituency, or by other political actors (Saward 2006, 302).

The virtue of democratic representation is not only that it makes one's representative claim visible to public audiences, but also that it opens a contestatory space for the represented to revise or transform the claim itself. By being attentive and responsible to migrants' various representative claims, states not only provide them with a voice, but also enhance the legitimacy of their immigration and emigration policies. In short, discharging R2R requires a scheme for enabling migrants to make democratic representative claims.

As I argued in Chapter 6, there are various forms of R2R, including both electoral and non-electoral ones. For inward R2R, an electoral form of representation usually takes place at the level of local governments. While the number of countries that enfranchise non-citizen residents has increased, most temporary migrants have not benefited from this development, as local voting rights are usually limited only to long-term or permanent residents. Moreover, there is almost no national electoral representation for non-citizen immigrants.

For outward R2R, the dominant mechanism is formal electoral representation through external voting. According to the latest research, more than 120 countries permit their external citizens to vote in national elections (Collyer 2014). While there are ongoing discussions about the legitimacy of external voting and how emigrants' votes are counted (Rubio-Marín 2000; Bauböck 2007; Honohan 2011), as a matter of fact, external voting has become almost an embedded norm in the world of democratic states. The dominant mode of external voting is what Peter Spiro (2006) called "assimilated representation" through which external votes are incorporated into the ballot box of internal votes.

However, several countries, including Croatia, France, Italy, Portugal and Romania have systems of "discrete representation," reserving special seats in their national parliaments for extraterritorial voting districts.

There are also non-electoral forms of outward R2R. Major sending countries have special departments for those living outside their country (e.g., POEA and OWWA in the Philippines), and they play a key role in representing emigrants' interests in the decision-making process (Gamlen 2014). While these cases are examples of political, but not democratic, representation, since migrants themselves play a limited role in authorising and contesting the representative claims, the emigrant council systems, which I advocated in Chapter 6, is an example for democratic contestatory representation.

R2R may take a transnational form if the representation process involves two or more states. The European Parliament is a good example of supranational electoral representation, although its accountability has long been questioned. There are also non-electoral forms of transnational representation. One good example is the *Colombo Process* launched by major migration states in Asia and the Middle-East in 2003 as an inter-regional consultative process for the better management of overseas employment and labour.

7.3 MAPPING STATE RESPONSIBILITIES

The responsible states should discharge all three responsibilities suggested above to some extent. They should implement a scheme of coordination that ensures legal protection, social care, and political representation of individuals within and beyond their jurisdiction. The next task is to map how states can discharge their responsibilities towards migrants within and beyond their jurisdictions.

How both homeland and host states assume such responsibilities defines what I call the 'responsibility structure,' a structural condition of responsibility for protecting, caring for and representing their interests in non-domination. The responsibility structure in relation to a migrant is constituted from a combination of the possible institutional sources.

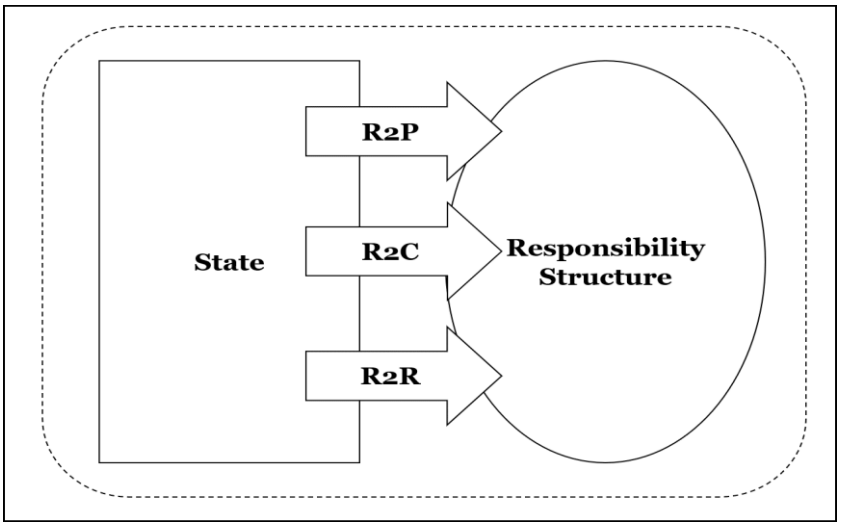

Figure 1

Let me now offer several illustrations. The responsibility structure for a sedentary middle-class Japanese citizen living in Japan for most of his life would look like Figure 1. For him, most responsibility structure is closed inside Japan. All the levels of responsibility are strong, which is indicated by a larger arrow. His basic interests are articulated and protected, and various social actors take care of his needs, and his interests can be represented through regular elections. I assume this responsibility structure as a standard case.

Such a responsibility structure becomes quite different if we consider that for a young female Filipino trainee in Japan, illustrated in Figure 2. Her responsibility structure overlaps between two discrete states. As a non-citizen temporary trainee in Japan, inward R2P towards her is weaker than that for a Japanese citizen. Her rights to residence and work are significantly limited by Japanese immigration law. Since she is also a foreign trainee, normal labour laws do not apply to her, and there is no official agency to accept her complaint about abuse. While she may get some social benefits and assistance in Japan, their availability is largely at the discretion of local government. The level of inward R2C is, thus, also low. Finally, she has no political rights, either in local or national elections, and no official resources available to make her claims visible to the public. The level of inward R2R is also low for her.

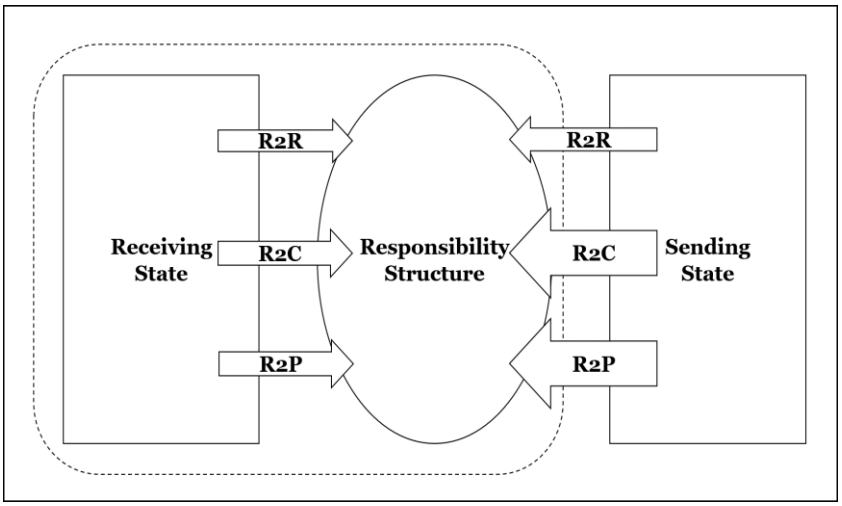

Figure 2

At the same time, as a Filipino emigrant, the responsibility structure for her is also constructed by the policies and programmes of the Philippine government. As for R2P, the 1995 Act and the ICRMW ground her rights claims while living in Japan. She may receive social benefits, including unemployment benefits and paid return. The Philippines have two main branches for Filipino workers, which aim to protect and care for the interests of Filipino workers. She can also exercise her external voting right, next to making use of the various official representation networks through the branches of OWWA and POEA. Arguably, if all other things are equal, her responsibility structure is still less restricted than that of a Vietnamese trainee, for example, since the levels of outward responsibility are significantly lower in Vietnam than in the Philippines.

It should be noted that there are also variations in individuals' responsibility structure *within* a combination of two states. What protection, resources and contestations are available depends on multiple factors, such as migrants' skills, knowledge, age, length of stay, visa categories, and so on.

I concede that the above illustrations of responsibility structures are speculative. However, we can draw three implications. First, rather than having most of their needs provided for by one government, migrants have to piece together their protection and resources to live autonomous lives under the overlapping responsibilities of two states. If we take the Filipina case above, she might be protected through the Japanese channel when claiming that her employer is breaching the law, or she may submit her complaint

to the caring authority of the Filipino government expecting the exercise of diplomatic protection on her behalf. While the chance of representation is very limited in Japan, her vote from abroad can directly influence the Philippines' emigration policies and, indirectly, Japanese immigration policies.

Second, while responsibilities are overlapping in a transnational responsibility structure, each state's responsibility is often discretionary and uncoordinated. As it stands, immigration policies are a matter of state discretion, and state discretion applies also to emigration policies. This leads us to the thorny question of the ranges and scope of state discretion of both immigration and emigration policies.

Third, because the responsibility structure overlaps between the two states, a black and white allocation of full responsibility is impracticable. Because migrants live in a transnational space and their life plan traverses two discrete states, we should not think about *whether* Japan or the Philippines bear responsibility, but *how* their responsibilities can be shared between them.

In sum, my threefold framework of responsibilities helps capture the complexity of responsibility practices in an increasingly transnational world. Although all migrants have some resources from both sending and receiving countries, the package of resources varies structurally over time, across space and among individuals.

7.4 THE CASE FOR R2R

My analysis of state responsibility has been largely descriptive in the sense that I have sought to identify in what ways states may discharge their responsibility, and how migrants may claim its enactment, and have mapped out how the responsibility structures are constituted. But the analysis is insufficient in so far as I have not offered a normative argument about how the states *ought to* discharge and share their responsibilities to migrants. My main normative claim is that we need a more enhanced mode of responsibilities, especially R2R, between sending and receiving states. R2R is important not only for protecting migrants from domination, but also for enhancing the transnational democratic credibility of migration policies.

To begin with, we can understand three modes of responsibility as they constitute a cycle. R2P comes first to structure protection for basic rights. Based on this framework, the state assigns R2C to various social actors to meet contextual and particular needs. As

a third step, the justifiability of the current arrangement of R2P and R2C will be tested and contested through R2R. We may call this the PCR cycle of responsibility. This is nothing new if it is applied to domestic democratic politics. However, when we consider this cycle for migrants, we will notice that it is not well-organised and highly fragmented. It is often not clear what rights migrants enjoy 'here and there.' Social benefits and services provided for migrants depend on how active and inclusive emigration and immigration policies are. While migrants' life chances are significantly constrained by these provisions, they lack official channels for making their claims publicly visible. Reconsidering state responsibilities towards migrants requires the construction of a desirable cycle of responsibility from protection to care to representation.

While the states have broadened their R2P and R2C within and beyond jurisdictional boundaries, the key point is that migrants should be treated, not as passive objects of policies, but as active subjects of justification. Certainly, if R2P protects broader ranges of interests and R2C makes good allocations of social care and resourcing, this would lead to a less unjust outcome for migrants. However, the question as to how the current arrangement of responsibility is politically and democratically justified towards citizens and migrants themselves remains unanswered.

The enhancement of R2R is a promising way to criticise and justify the current and future arrangement of responsibilities. While R2P draws its justification from the universality and impartiality of interests, it runs a risk of false universality and the mis-identification of interests. Because no rule can perfectly define one's true interests, the list of basic rights should be reflexively updated and renewed if it no longer works as expected. Representation triggers updating and renewal by making visible the kinds of interests that are not well-protected under the purview of existing laws. R2C, in contrast, focuses on actual relationships and contexts and, in turn, may lack consistency with public values, such as justice or rights. Caregivers may find it difficult to provide good care due to insufficient resources, or some vulnerable migrants may have trouble finding good care or services for their needs. Representation enables caregivers and migrants alike to make their claims and complaints visible in public, and, thus, triggers the re-framing of the current responsibility structure. In short, the enhancement of R2R is plausible because it provides a promising way to mediate these risks and to enhance the democratic legitimacy of state policies.

The justification of transnational realisation of R2R draws on the generic functions of democracy or the values that democratic representation should achieve in serving certain purposes. R2R reduces the vulnerability of temporary migrants to domination by providing them with a chance to shape and contest responsibility structures. Even when governments provide protections and resources for temporary migrants, taking into account their life plans, the legitimacy of such arrangements should be judged by the relevant constituency, i.e. temporary migrants themselves.

In the course of the "constructivist turn" in democratic theory, various scholars have analysed the interactive process of claim-making and claim-reception between claim-makers, its constituency and audience. Suppose that a government appoints a group of claim-makers in relation to the issue of temporary migrants abroad. If their claims are approved by an audience (e.g., policy makers), their claim can be seen to be 'successful.' However, successful representative claims are not necessarily legitimate representative claims, unless the members of constituencies have an equal chance of effective contestation. As Saward (2010, 145) notes, the "ultimate judge of the democratic legitimacy of representative claims is not theorists or other observers but the constituency." The first-order judgment about whether a claim is legitimate or not is made only by the constituency.

Instituting a claim-making body for a specific constituency (e.g., an advisory council for emigrants) constitutes a representative relationship between that body and that constituency. Importantly, while the existence of such an institution creates a would-be claim-maker working as a representative, the representativity of their claims is always provisional. Suppose that an emigrant council of the Philippines articulates a claim about Filipino trainees in Japan towards Japanese policy-makers and citizens. If their claim is reasonably accepted by the latter, their claim is successful. However, a successful representative claim is not necessarily democratically legitimate unless the constituency of such a claim (i.e. Filipino trainees) is able to shape and contest the claim and accord credibility to it. Otherwise, the claim made by a claim-maker holds provisional legitimacy at best. It is even possible for a claim-maker to misrepresent the interests of his constituency, which is rather normal in ordinary democratic politics. I do not, however, suggest any universal criterion to judge the representativity of a claim.

However, there is no need to worry about the inevitable 'gap' between the views of claim-makers and constituencies. As Hanna Pitkin (1967, 240) argues, the concept of

representation is "a continuing tension between ideal and achievement." If a claim-maker makes a claim that is not adequately representative of its constituency, the members of the constituency can make their contestatory claim to revise and change it. The process of representation is reflexive and performative, and the gap between claim-maker and constituency fosters democratic interactions between them. In this sense, the real democratic deficit in migration and citizenship policies is that we do not know how wide the actual gap is. While there is a growing disjuncture between popular will and migration control in both sending and receiving countries, migrants have little voice to shape the admission rules that profoundly affect their interests. A transnational public sphere is emerging, but it is not yet developed enough to make political debates visible to all citizens involved.

By institutionalising or appointing a claim-making body, temporary migrants are not only enabled to engage in a reflexive process of claim-making about themselves, but it also provides a larger audience for their representative claim. Again, the mere existence of a claim-making body does not assure the representativity of their claims. At this point, theorists or other observers can contribute to the discussion of how to institute a contestatory channel through which migrants can equally, widely and fairly participate in making a claim. As Saward (2010, 146) notes, theorists should play "a critical (and varied and complex) second-order role, interpreting the judgments that the appropriate people do make about representative claims and examining the conditions that have enabled those judgments." In this respect, I argued in Chapter 6 that the most promising way for institutionalised contestation for temporary migrants is immigrant and emigrant councils in receiving and sending countries.

Therefore, enhanced R2R is necessary for reducing the vulnerability of temporary migrants to transnational domination, because R2R enables migrants to exercise their democratic agencies in relation to their responsibility structure.

Moreover, enhanced R2R also has a communicative and advocative effect for sedentary citizens. According to Suzanne Dovi (2007), the purpose of democracy is to resolve conflicts peacefully and fairly for all those who are concerned. She argues that there are three values to which good democratic representations contribute: civic equality, self-governance and inclusion. In order to foster such values, the "good" representatives should exhibit three primary characteristics: fair-mindedness, critical trust building, and good gatekeeping (Dovi 2007). If the transnational democratic systems are properly

designed to exhibit these virtues, then R2R not only empowers migrants to enjoy non-domination but creates also sources of *trust* between temporary migrants and sedentary citizens. As transnational responsibility structures are complex and multifaceted, we need a complex and multifaceted framework to fairly and peacefully resolve conflicts generated by the hybrid patterns of human mobility. In this regard, R2R not only enables the representation of migrants' interests in their rights and needs but also represent their opinions and preferences about the common good of a political community, through which their claims are counted together with sedentary citizens.

In sum, the representation of migrants' perspective is important, not merely for protecting migrants from domination, but also for enhancing the transnational democratic credibility of migration policies.

Importantly, my defence of R2R does not mean replacing the dominant system of election-based representative democracy. As I argued in Chapter 6, the contestatory mode of representation complements the deficits of electoral representation for those who are unable to make their claims visible in public. Electoral representation by the authorial demos is justified for preserving the democratic value of self-government. However, collective self-government cannot legitimately dominate those who are excluded from the authorial demos. What I propose here is a reasonable division of labour between authorial and editorial demos, through which the authorially-constituted decision-makers are forced to track the interests of editorially-constructed claim-makers, who are responsible for representing various non-authorial constituencies.

The key fact is that migrants are affected and coerced by the policies of both sending and receiving states, which results in the different configurations of responsibility structures. Because their interests are special in the sense that their well-being cannot be fully maintained by either sending or receiving state, there is a good case that migrants should be able to play a key role in justifying the current arrangement of responsibility-sharing. This justification cannot be brought out merely by assimilating migrants into the sedentary citizenries of either the sending or receiving country, because the issue is transnational by nature. And because it is transnational, migrants themselves should be able to exercise their right to representation to decide how responsibility towards them should be shared. Thus, to discharge R2R, both receiving and sending countries should see to it that migrants themselves can take part in the justification and transformation of the structure of transnational responsibility towards them.

7.5 THE LIMITS OF STATE RESPONSIBILITY

I have argued how enhancing responsibilities of sending and receiving countries plays a key role in creating a society where everyone is free from domination. However, this claim does not mean that any state intervention or action for this purpose is justifiable. In this section, I underline the possible limits of transnational responsibility.

Existing overlapping responsibility structures have invoked international disputes and conflicts about the limit of transnational political engagements. Transnational political participation and activities by migrant communities or diasporas, in particular, have raised concern for receiving countries. Diasporic mobilisation is considered as a bar to a smooth integration process in the receiving countries. It has also been called "long-distance nationalism" (Anderson 1998), which may violate the principle of self-determination and non-intervention in international society. When a state claims to act on behalf of its nationals, such claims indeed represent and strengthen the sovereignty of states.

As I have shown in this chapter, the responsibility structure for each migrant varies according to the combination and commitments of states. Some states are active in protecting, caring for and representing their external citizens while they may maintain an exclusionary stance towards newcomers within. Some states are rather indifferent to their external citizens, while they aim to include significant immigrant populations within. This asymmetry raises a difficult question in transnational responsibility sharing.

This thesis has so far advanced a proposal for transnational representation by both sending and receiving countries, envisioning the appropriate responsibility structure to realise the ideal of non-domination. The limits of state responsibilities also lie in this idea: a state cannot justify invoking its responsibility if its action involves or heightens the domination of individuals and groups, or of other states. In other words, justifiable and responsible actions are only those which serve to reduce and minimise domination overall.

By taking the continuum of domination and non-domination into account, we can, thus, understand what kinds of intervention are not justifiable in principle. This insight leads us to employ the concept of non-domination also to the realm of international relations. Inspired by the neo-republican concept of non-domination, Young (emphasis is mine,

2005, 146) offers the baseline argument in the following way: "the self-determining entity should be able to set its own ends and be able to act toward their realisation, *within the limits of respect for, and cooperation with, other agents with whom one interacts and with whom one stands in relation.*" That is, like individuals, states should enjoy functional capacity over a suitable range and depth of choices tied to their conceptions of the good, and no state should have the capacity to interfere with others' actions without effective chances of consultation and contestation. From this perspective, I argue for three limits to state responsibility.

Firstly, no state should impose a specific identity or ethnicity on migrants. Certainly, culture and ethnicity affect one's context of choice, which cannot be separated from one's conception of the good. Yet, there is a fine line between providing civic and language education and imposing or incentivising a specific action or mobilisation in the name of a nation (see my argument in Chapter 5). The former is to protect and resource the functional capacity of individuals for living together in a society, while the latter involves the internal restrictions of individuals and forced loyalty. The non-domination perspective justifies the former, but not the latter.

Of course, representing external citizens as a 'people' or 'nation' inevitably seems to strengthen the state-sovereign relationship. At the same time, the literature on transnationalism has emphasised the transnational space as the space for overcoming nation-states. Recent literature has explored how the transnational space itself is produced and managed by states (Fitzgerald 2009; Gamlen 2014) through "inter-governmentalisation," as I termed it in Chapter 2. If governments try to govern their citizens within the national territory and abroad, such governance process should be shaped and contested by their citizens. Because their hybrid identity and sense of belonging cannot be represented in an either-or manner, the key is to allow temporary migrants challenge their misrepresentation in the transnational space by enabling and institutionalising contestation.

Secondly, any action that threatens the basic capacity of states cannot be justifiable under the concept of responsibility. For instance, no country can legitimately export or force its citizens to move to another state. There is also a fine line drawn between providing protection and resources for migrants who take the official route agreed between two countries and encouraging emigration to another for enhancing national interests or reducing welfare costs without a prior agreement with a receiving country.

As Nancy Green (2005, 283–84) argues, there has been a connotation between "colonialism" and "emigration," and these concepts have sometimes been used interchangeably, with the former denoting the export of "civilisation" and the latter exporting surplus-labour. What this implies is that migration is indeed an inherently political process, which should be regulated through stronger cooperation between states. Even when emigration or immigration would benefit the national interest, this reason alone is insufficient to impose corresponding duties on other states. It is at this point that we need a stronger R2R to understand the real claims and interests of those involved.

Thirdly, no state can legitimately claim to dominate its citizens and citizens of other states, including temporary migrants. The reason why slavery or caste-like systems within the jurisdiction cannot be justified is the same as the reason why state-led colonialism or emigration cannot be justified. As I argued in Chapter 6, this does not mean that states have to treat migrants equally as sedentary citizens. Instead, what it requires is to entrench "equality of status" by "the recognition of their special position and the public awareness of their contingent and temporary relation to that society" (Ottonelli and Torresi 2012, 220).

I believe that the above argument suggests the universal values to which liberal democratic states should aspire. What is envisioned here is that each state should be able to enjoy non-domination by all states sharing responsibilities together. This vision ultimately defends the reciprocal treatment of immigrants and emigrants. In other words, each state has to treat its emigrants and immigrants in such a way that the same treatment can be applied equally by other all other states to their emigrants and immigrants. Again, this does not mean that the states should treat them as equal to sedentary citizens. Rather, we should respect them as the distinct subjects of autonomy going back and forth between territorially distinct polities, recognise their divided political membership and the social basis of self-respect, and create an international society where "everyone can look one another in the eye without reason for fear or deference" (Pettit 2014, 99) regardless of their different life plans or senses of belonging.

There are, of course, important differences in the treatment of immigrants and emigrants. But it is exactly why we need a "perspectival switch" (Bauböck 2011, 689): "[f]rom the perspective of states, temporary migrants enter and leave their territories, but from the perspective of temporary migrants states enter and leave their lives." What immigrants require from receiving countries chimes with what emigrants require from

sending countries, and vice-versa. Therefore, ideally, it is only when states have consistent policies for both emigrants and immigrants that temporary migrants can enjoy non-domination.

However, a further problem arises if we understand that not all states share such a vision – even most liberal states do not. A state may lack the functional capacity to protect and resource their external citizens, even though it is willing to do so. While many labour-exporting states hold legitimate concerns to protect and care for their workers abroad, they may flinch from making a claim against the host country out of fear that receiving countries may baulk at admitting new workers. Or, even worse, countries may just deny that liberal democratic values apply to their political regimes and policies. How can we compel states to assume their share of responsibilities?

Obviously, there is no simple answer to this question. However, if the problem is the lack of state willing to take on responsibility, one should underline the need for international redistribution and empowerment. Indeed, the plea for expanding temporary migration programmes emerges from the insufficiency of international redistribution and economic assistance. Will Kymlicka (1995, 127) argues that the legitimacy of discretionary border hinges upon how states discharge their international responsibility, and "a country forfeits its right to restrict immigration if it has failed to live up to its obligations to share its wealth with the poorer countries of the world."

The problem of illiberal or undemocratic states is more complex. In these cases, the moral judgement is clear enough. From the perspective outlined above, we can detect the potential sources and reality of domination over migrants, which allows us to trace the irresponsibility of either sending or receiving countries. But it is unclear what is the proper way to implement this idea – that is, what other country has the authority to intervene to force the irresponsible government to respect temporary migrants' freedom? The same problem occurs when a sending country discharges inadequate responsibility towards their external citizens. Sending countries sometimes prioritise economic benefits over human rights, flinching from making a just claim for protection of the freedom of their temporary migrant nationals. In the course of governing temporariness, sending countries have attempted to control and govern their citizens' external behaviour. But what third party (if any) has the authority to intervene for compelling a sending country to play a responsible role?

We should distinguish between two distinct questions here: (1) what kinds of state actions are justified under the principle of R2R? (2) Should states impose their policies on migrants if these are in conflict with other states' policies? The first question refers to the problem of identifying a defensible theory of state responsibility in the context of international migration. The second question is about implementing this theory and even imposing its prescriptions.

This thesis has dealt with the first question, that is, defending a specific conception of democratic citizenship of migrants and state responsibility. Regarding this question, I argued that the most defensible theory is based on the value of non-domination and transnationally differentiated citizenship. But this does not mean that any state sympathetic to this theory can impose its will upon another country that does not share this view. Even though a receiving country does not adequately protect and resource external citizens of a sending country, the latter cannot force the former to comply with its policy without any prior agreement.

For the above cases, the solution seems to be a higher level of R2R in order to reach an agreement about responsibility-sharing between sending and receiving countries. The resulting agreement may well involve lists of core rights for both immigrants and emigrants, with a notice about possible renewal. However, as in the cases of the GCC countries, it is often difficult to persuade states to respect human rights. Such irresponsibility is often couched in the name of self-determination. What is more, even many liberal states still hold inconsistent and asymmetrical policies for immigrants and emigrants. Under these circumstances, it becomes increasingly difficult to prevent and reduce the domination of temporary migrants.

However, this does not mean that we should stand by and do nothing. Accepting domination of temporary migrants is no less irresponsible than the same attitude towards sedentary citizens. Responsible states should discharge their duty to protect, care for and represent those who are under their rules and scope of responsibility. Hence, we should seek to promote freedom as non-domination and support emancipation of temporary migrants from domination. Moreover, there is an important difference between non-intervention and non-domination. This is often clear in the international context. A principle of non-intervention denies the legitimacy of all possible interventions by any other state; non-domination requires relational equality and discursive justifications between the two. As the Colombo process draws some concession from GCC states with

regard to the protection of human rights, migrants' collective and transnational representation can provide a leverage to push for reforms in illiberal countries. Finally, we can push for developing and strengthening international mechanisms for protecting and resourcing migrants, too. Many leading countries of emigration participated in the regional and intergovernmental process of negotiation over the terms and conditions of temporary migrants, which is partly embodied in *The Global Compact for Safe, Orderly and Regular Migration* (2018) in collaboration with other countries of immigration and international organisations.

Ultimately, the R2R principle reinforces the transnational order by helping states to meet their democratic responsibilities. It offers fresh programmatic opportunities for migrants to shape and contest states' actions for preventing and remedying transnational domination as active bearers of a distinct life plan, rather than forcing them to remain mere recipients of rights.

7.6 CONCLUSION

In this chapter, I argued the following points. State responsibility can be distinguished into three modes, R2P, R2C and R2R, respectively. Every state has different levels and configurations of responsibility, which, together, constitute the different responsibility structure for migrants. While enhanced R2P and R2C are desirable, this chapter defended the idea that R2R should play a pivotal role. R2R is needed because it not only enables migrants to act as active subjects of justification, but also enhances the democratic legitimacy of immigration and emigration policies.

I also examined the possible limits of state responsibilities. The limit is that state responsibility can be justified only on the condition that it serves to reduce or minimise the domination of temporary migrants. This limit refers to the unjustifiability of state interventions which may unduly burden other countries, or of illiberal practices which may threaten democratic stability. Yet, given that state responsibilities have limits, the direction of institutional reform should aim at higher levels of R2R and not lower ones.

Chapter 8: Conclusion

8.1 SUMMARY OF THE ARGUMENT

The twenty-first century has been called "the age of migration" (Castles and Miller 2009). The massive numbers of movements across borders have made every society aware that we are living in an increasingly interdependent and interconnected world. At the same time, this age has been also painted as 'the age of populism,' as more and more dominant national groups assert and mobilise their identities for preserving their distinctiveness. As a result, many countries are facing a dilemma between openness and closure. It is these developments that constitute the background for the recent rediscovery of temporary migration.

Wedged between pleas for open borders and closed identities, proposals for regulating temporary migration comes to the fore. Chapter 2 showed how the settled rules of political life in many countries are facing the new 'challenge of temporariness.' The challenge of temporary migration refers to the theoretical and practical problems of accommodating the differences and needs arising from temporary movements of people in a feasible and morally defensible way. While the goal of 'triple-win' has gained some popularity among policy-makers, and both sending and receiving countries have started governing temporariness by various policy measures, I underlined the persistent and systemic vulnerability of temporary migrants to domination. How can temporary migrants enjoy equal citizenship in a context of governmentalisation of temporariness, which has so far conditioned and isolated the lives of temporary migrants from the sphere of democratic responsibility? What are the claims of temporary migrants towards sending and receiving countries, and what responsibilities should these countries bear towards them?

As I argued in Chapter 3, the existing 'idealistic' and 'realistic' approaches find it difficult to make a principled case for temporary migration. Both idealists and realists consider temporary migration as a 'second best' that necessarily involves 'dirty hands' policy solutions, falling short of ideals. Certainly, in most parts of the world, many temporary migrants are indeed in precarious situations and vulnerable to domination. Given this potential domination, it might be considered reasonable that many scholars

and activists feel a strong temptation to flinch from expanding the admission of temporary migrants. If temporary migration programmes are potentially dominative and, more importantly, are dominative in practice, why should we admit temporary migrants? Indeed, this might be a reasonable position because if there are no temporary migrants, there is no need to be troubled by injustices in temporary migration, which may produce a new underclass in liberal societies. However, even though such a clean-hands approach might save the democratic ideal *within* a polity, it cannot deal with the prevailing injustices *across* polities. It neglects the severe injustices and claims of migrants and their families who wish for a better life. Because we live in a more mobile and flexible globalised world, there is no easy way to escape the challenges of temporariness.

The idealists' preference for sedentary equality is inadequate and misplaced. The problem is not that it is too idealistic but rather that this response is incoherent. Our political lives become increasingly and inescapably transnational, whether they are about the protection of rights, social care, or political representation. However, this interconnectedness is not only a source of injustices and unaccountability but also an opportunity for justice and transformation. Rather than concerning ourselves with the task of securing equality and freedom among sedentary citizens, we should strive for principles which can mediate the tensions between the interests of migrants, sending and receiving countries.

Many scholars view the challenge of temporariness as an intractable problem for liberal democracy. In this thesis, however, I have presented a rather positive view, advancing an account of migrant citizenship and transnational responsibility that can accommodate the distinct life plans of temporary migrants while advocating several practical proposals to address their vulnerabilities to domination. While I do not claim that the challenge of temporariness will be 'resolved' in the near future, I do believe that it can be well 'managed' towards the realisation of non-domination through socially and politically empowering temporary migrants to pursue their life plans under an intergovernmental structure produced by states.

In Chapter 4, I proposed a fresh account for understanding the condition of freedom of temporary migrants, building on the neo-republican concept of freedom as non-domination. As I see it, it is possible for temporary migrants to enjoy non-domination, if and only if they are sufficiently protected and resourced to exercise functional capabilities over a suitable range of choices (non-vitiation) and to exercise contestatory power if they

are exposed to any arbitrary power (non-invasion) under the intergovernmental structure of states. I hope that this account will help readers to understand how unfree temporary migrants are and how we can better reduce their vulnerability to domination.

Once we become aware of the transnational domination of temporary migrants, we should take steps to prevent and remedy it. The steps should include the transnational entrenchment of their basic rights, the stronger coordination of social benefits, and transnational representation of migrants within, beyond, and above national politics. As I claimed in Chapter 5 and 6, temporary migration can be defensible and 'ideal,' if and only if states recognise temporary migrants as bearers of life plans deserving non-domination, provide them with necessary protections and sufficient resources for carrying out their plans while accommodating their possible changes, and institutionalise contestatory channels for (de-)legitimising the current responsibility structure. If any arrangements fall short of such measures, the justifiability of temporary migration programmes should be questioned. Without such measures, talk of treating temporary migrants as equals is just a rhetorical cover for transnational domination and injustice.

In Chapter 7, I underlined the importance of R2R for triggering the democratic transformation of migration governance. While we need higher levels of R2P and R2C, R2R plays the key role in criticising and contesting the current responsibility structure. The enhanced mode of R2R should not merely provide better protection and care, but also enhance the transnational democratic credibility of migration policies. It is equally important to stress the limits of such transnational engagements. As I argued in Chapter 7, the states' responsibilities are not without constraints: state responsibility should not allow one state to dominate or impose unfair burdens on other states. State intervention should itself be evaluated on the basis of non-domination. That is to say, states cannot claim a right to interference merely based on their own interests. In other words, liberals should seek to ensure non-domination between states, as well as non-dominations of migrants. Within these limits, migrant citizenship and transnational responsibility can play a valuable and indispensable role within a broader theory of international justice.

Indeed, states bear responsibility if they want to keep their legitimate role in an increasingly transnational society. As a republican dictum goes, if free citizens are those who are citizens of a free state, then free migrants are those who live under a free international structure created by free states. While this argument does not dismiss the

importance of transnational civil society, states remain the most important actors in realising justice in international migration.

8.2 LIMITS AND IMPLICATIONS

I admit that my arguments have several limitations. I conclude this thesis by contemplating upon what my arguments have achieved and what remains to be achieved, providing some directions for future thought and research.

Firstly, throughout my thesis, I presupposed that all states are reasonable enough to uphold the liberal and democratic ideals of freedom and equality. Because of this presupposition, I could not make a principled argument about how to address the issues of temporary migration involving non-liberal, non-democratic states. This assumption presents a significant limitation for my argument, since many autocratic states, such as GCC states, have become main destinations of temporary migrant workers and impose on them stricter or more dominative rules. Because these countries are not constitutionally constrained matters of immigration, it might be questionable whether my theory applies to these countries. Yet, these autocratic states are not free from international responsibilities insofar as they seek to claim international legitimacy. As cases like the Colombo Process have shown, the collective and pluralistic voices of democratic states are not negligible even for autocratic states.

Secondly, as this thesis focuses on one type of temporariness, regulated temporariness, I could not explore in any detail the implication of my framework on the other two types of temporariness, namely, unregulated and irregular temporariness. Given the high political salience and large-scale vulnerability of irregular forms of temporary migration, how theories are applied to irregular temporariness will have important practical implications. However, it should be underlined that these forms of migration do not undermine the framework I have developed. This is because my thesis problematises vulnerability to domination and requires, in all cases, enhanced responsibilities for states. However, in the cases of irregular temporariness, it might be argued that they do not merit equal levels of protection and resourcing when compared to legal migrants because they have chosen their status as illegal. This point would provide an urgent area of concern about the relationship between the right to pursue one's life-plans and the duty to comply with the existing rules. Do irregular migrants deserve a lesser degree of non-domination

due to their violation of the law? Does this fact change the distributive shares of responsibility between sending and receiving countries? Therefore, the application of my framework to these categories is a crucial avenue for future research. However, this is a discussion for another day.

Thirdly, I have also not discussed the cases of refugees and asylum seekers. How should state responsibilities be distributed if the sending country does not play a responsible role? Obviously, in such cases, my claim for a shared responsibility would float in the air because such responsibility cannot be neatly shared between sending and receiving countries. Yet, I believe that this responsibility structure can be re-imagined so that it guides the shared responsibility of states also in these cases. Because the problem of protection for refugees and asylum seekers cannot be resolved under a bi-national responsibility structure, we would have a good reason to broaden the scope of responsibility. In other words, instead of seeking the binational resettlement of refugees, we should pursue a more international or even global path for realising global responsibilities. Importantly, like in the case of temporary migrants, the onus of justifications is put on the sovereign states, who claim to be legitimate members of the international community. The baseline argument I can put forward here is not so different from the cases of temporary migrants: if refugees and asylum seekers are vulnerable to societal and governmental domination, they should be sufficiently empowered not only to carry out their life plans but also to have contestatory voices for engaging in the legitimation process of refugee and asylum policies. Obviously, creating such responsibility structure should involve new mechanisms different from those for normal migration, but I believe that my argument about the possible channels of contestations would have some implications for pointing to the way forward.

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