

SYMPOSIUM
MIGRATION AND JUSTICE FOR PEOPLE ON THE MOVE



TEMPORARY MIGRATION AND
CHILDREN'S RIGHTS

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Temporary Migration and Children's Rights*

Luara Ferracioli

I

What does justice in the area of temporary migration require? In her excellent book, *Justice for People on the Move*, Gillian Brock argues that temporary migration arrangements that enable the movement of low-skilled workers from the developing to the developed world are outside the domain of ideal theory and cannot fully comply with the demands of those on the progressive side of politics. After all, low-skilled temporary migration arrangements exist as a result of domestic and global inequality, and presuppose non-ideal conditions both in their rationale and their implementation.

In terms of rationale, low-skilled temporary migration arrangements, as currently pursued by affluent liberal states, exist because low paid jobs create unmet labour needs domestically thereby providing immigrants from developing states with

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desirable work opportunities given the precarious labour conditions they face at home. In terms of implementation, temporary migration arrangements presuppose a host society that is unwilling to accept a great number of migrants and afford them a complete package of rights, including welfare rights and robust protections against exploitation and domination.¹ Indeed, the appetite for the inclusion of large numbers of immigrants is parasitic on the expectation that they will lack many of the rights of citizenship, and so will impose less of a burden on the community. Requiring that temporary migration arrangements be developed in ways that place temporary migrants on an equal legal, socio and economic position as citizens, leads to a situation where so few immigrants would be allowed to cross borders that this would do nothing to disrupt current levels of inequality at the global level. This so-called rights versus numbers problem that Brock takes seriously can easily be re-described as an issue of global versus domestic justice.² What is good for domestic justice in a host society (i.e, equality of standing between immigrants and citizens) is bad for global justice. And what is good for global justice (i.e, high numbers of low-skilled workers who can improve their economic situation and send remittance back home) can be perceived as costly by citizens in affluent states and so be seen as undesirable unless the costs are mitigated by inequality of standing between citizens and immigrants.

Such important non-ideal considerations have led Brock to push for a compromise between numbers and rights. She does so by inviting her reader to lower her expectations of what temporary

¹ These sorts of arrangements can also apply to skilled immigrants. Of course skilled immigrants are typically in a better bargaining position than low skilled workers given the global race for talent and the higher wages (which lead to better opportunities for savings) attached to highly skilled position. For a discussion, see Shachar and Hirschl 2014.

² Ruhs 2006; Lenard and Straehle 2012.

migrants are morally entitled to so we can adequately employ temporary migration arrangements in the service of both domestic and global justice. Her main strategy is to focus on the following philosophical questions: which rights on the part of temporary migrants are non-negotiable, and which rights can be put aside so as to foster enough appetite for arrangements that allow a great number of migrant workers to temporarily join the labour market of affluent liberal states?³

Such a move is commendable. If we are to take everyone’s basic interests into account under non-ideal conditions, we must aim for a compromise that enables temporary migration on the part of many low-skilled workers without putting them in a precarious position and without creating a situation where citizens of host societies believe that the costs associated with immigration are too high. Otherwise there is a genuine risk that host societies will simply choose to attach better wages and work conditions to unfulfilled jobs, making them more desirable to their own citizens, whilst choosing to contribute to global justice via the standard and less effective means of foreign aid.⁴

So what are such non-negotiable rights? According to Brock, temporary migrants should have access to all the basic civil rights available in a liberal society, such as rights to life, liberty and security, rights to relevant protection from the law and against arbitrary arrest, detention and exile, rights to privacy, movement within the state, and rights to freedom of association, expression, thought, conscience, and religion. She also argues that temporary immigrants have a right to basic and emergency health care, and a right to change employment within certain sectors or occupations.

³ For similar approaches, see Lister 2014; Barry and Ferracioli 2018.

⁴ For the claim that remittances are more effective against poverty than foreign aid, see Kapur and McHale 2005.

What shall we make of Brock's compromise position? I am certainly in strong agreement with Brock that these are core rights, and that no amount of remittances or savings can justify withdrawing them from temporary immigrants. I am also in agreement with Brock when she resists calls from open borders theorists for conceiving of temporary migration as intrinsically problematic due to its temporary nature.⁵ But there is one important area of disagreement between us: family life. For Brock, the right to family life is in fact negotiable and it is permissible for liberal states to either deny entrance to family members or allow entrance to be conditional on financial self-sufficiency. In this essay, I argue that Brock is wrong in accepting the separation of parents and children as a direct or indirect cost of temporary migration arrangements that are sufficiently feasible. In particular, I argue that the right of children not to be separated from each parent they are already in a valuable relationship with creates stringent obligations on migrant workers, their employers, as well as host societies. I also show that such obligations lead to interesting implications for domestic policies in the area of child care, implications which grate against calls by many feminists that liberal societies must increase the care options available to professional parents, and, in particular, mothers, so as to create the conditions for the realization of gender justice at the domestic level. As we will see, the migration of mothers from developing states to perform care work in developed states highlights the tensions between gender justice at the domestic and at the international levels. I argue that increasing options for parents, and, in particular, mothers, in affluent liberal societies can, at times, disadvantage mothers from developing countries in ways that are morally problematic and mostly avoidable.

⁵ For a defence of permanent migration, see Lenard and Straehle 2012. For a defence of open borders, see Oberman 2016.

II

Brock's argument against a right to family life on the part of temporary workers is very simple. She calls attention to the fact that liberal societies already allow for family separation by allowing individuals to pursue work opportunities that prevent them from having an uninterrupted family life. As she puts it:

many citizens choose occupations that take them away from their children or spouses for considerable periods of time. Consider how this is the case with service in the military, work on ships, or employment on the international space station. If choosing such jobs that require separation from families for long periods of time can be reasonable, then of course, so it can be similarly reasonable to choose a migrant work scheme that carries similar restrictions. So, in principle, I do not think there is a major problem with these sorts of requirements, and individual migrants should be free to decide how much this issue matters to them (Brock 2020, 162).

This argument raises a number of important questions: Is it in fact reasonable to expect workers to be long periods of time without their children, even if it is reasonable to expect them to be long periods of time without other family members? Are temporary workers, specially the low-skilled amongst them, always in a position to make choices depending on how much being close to their children matters to them? And most importantly, does it matter that children are never in a position to choose whether or not they want to be separated from their parents in the first place?

As I see it, Brock's argument relies on the standard move that if a practice or arrangement is socially acceptable at the domestic level, then it surely, cannot be a problem at the international level.

But this move is too quick, and this is because we shouldn't in fact assume that it is morally unproblematic for individuals to be placed in a position where they must live apart from their children or even unproblematic for them to make such a choice if genuine alternatives are available. States, workers and even employers do wrong if they avoidably create a situation where children are left for a significant period of time without access to intimacy and affection from each of their parents. This is because such separation has a significant negative effect on their well-being and places them in a position where they temporarily lack access to one of the most important goods of childhood: a loving relationship with all of their competent parents, however many there are.⁶ Moreover, such detrimental effect on their well being and on their ability to enjoy a core good of childhood applies irrespective of how well looked after they are by those who are left in charge. Indeed, the loving relationship a child enjoys with *each* competent parent cannot be adequately substituted by a relationship with anyone else, including other competent parents, for each relationship has value in its own right and contributes to a good childhood in its own way.⁷ Taking such relationship away from a child for a significant period of time fails to take seriously the deep and robust love a child feels towards each parent and the child's

⁶ Ferracioli 2014. I do not mean to suggest that short-term separation is problematic. Children can be incredibly resilient and even a few months of separation can be acceptable. Here I have one year or longer in mind, but I am open to philosophical and empirical arguments showing that the line must be drawn elsewhere.

⁷ The discussion does not apply to incompetent parents since children are, all things considered, better off if they are separated from a parent who does not meet the minimum threshold of competency.

ability to show and receive affection, as well as pursue joint valuable projects without significant interruptions.⁸

Now, Brock is correct that some careers do require family separation. No one thinks that it is viable for an astronaut or miner to take her children to live in a space station or remote mining camp. But some other careers can in fact be made compatible with child rearing. An army personnel stationed somewhere else in her state can take her children with her if the working culture in place is supportive of a family life. The point here is that careers that have been traditionally seen as incompatible with family life, can be made compatible with a change of culture and expectation. And if that is so, it seems quite problematic for employers to insist on family separation when the worker could in principle both discharge her work obligations and enjoy a territorially-located loving relationship with her child(ren).

This is not to deny that some jobs take place in environments that are either unavoidably dangerous for children, or put children in a position where they cannot access many of the core goods of childhood, such as education, play and friendships with other children. This would be true of a naval ship or a long-term research expedition in the Arctic. In such cases, it is impossible to adequately accommodate children, no matter the working culture in place. Does it then become reasonable for parents to accept such jobs and leave their children behind? The answer is no.

⁸ Note that my claim here is not that children have a moral right to have two parents. Rather the claim is that they have a claim to enjoy a territorially-located loving relationship with each of her competent parents irrespective of how many parents they have. Note also that I am not arguing that it is impermissible for parents to separate. The point is that whichever arrangement parents come up with after a separation, it cannot put children in a position where they spend a significant period of time without seeing one of their competent parents.

If we start with the assumption that children have a basic interest in enjoying each of her parent-child relationships without significant interruptions, then it is wrong for parents to accept jobs where they will be placed in a position where they cannot adequately protect the interests of their children. Indeed, so long as other jobs are available for parents, it is not unjust that morality prevents parents from engaging in work that requires family separation.

To be sure, jobs are not fungible in terms of how they fit with one's conception of the good, even if it is true that they can be comparable in terms of meeting one's basic needs. Some parents see a career in (say) the navy as irreplaceable with a career in the local transport ferry or the local tourist boat. There is therefore a worry that the discussion so far fails to appreciate that it is unfair to expect someone to refuse an important benefit, merely because she is a parent.

I certainly think that it is regrettable that some careers are incompatible with parenting, but I resist the assumption that such incompatibility is necessarily an issue of fairness. As I mentioned above, it is unjust to create or maintain avoidable barriers that prevent parents from pursuing a certain career whilst caring for their children. But it is not unjust that parents have some life choices closed to them once they become parents. Indeed, in the same way that I must reconsider my love for risky sports, or for spending all my non-working hours reading novels, I must also reconsider my career options once I become a parent. When the barriers in place are artificial and socially imposed, I can demand accommodation on the part of employers so as to simultaneously be a good employee and parent. But when the barriers in place are a result of the child-unfriendly *nature* of the job, however, I must either choose not to have children, or choose a different career path for the future.

Similar reasons should also guide action on the part of employers. If I am an employer who realizes that my organization or company requires family separation, I must think critically and carefully about why this is so. If separation is avoidable, I owe it to my employees to make structural changes so as prevent such separations in the future. But if separation is unavoidable due to the nature of the work, then the right thing to do is to offer alternative (yet comparable) career paths in the organization for those employees who have children. I also have a duty to make the nature of new jobs explicit so as to discourage parents from applying. (And depending of the laws in place, I ought to explicitly encourage *childless* workers to apply when new jobs become available). Justice requires that people are not discriminated in the labour market on the basis of arbitrary features, and that applicants do not have their right to privacy violated, but justice does not require that parents be encouraged to apply for positions that put them in a position where they cannot protect the basic interests of their children.⁹ My having a child is not arbitrary in the way my sex or sexuality is. Quite the opposite: having children creates stringent obligations on me qua parent, and puts everyone else in society at a position where they must take into account the fact that there is one more child in the world whose interests matter.¹⁰

⁹ Does that open the door for problematic discrimination? If the core interests of third parties support favoring one applicant, without putting the other applicant in a position where she cannot protect her basic rights, then it is not obvious that it counts as problematic discrimination.

¹⁰ I assume here that not only parents and states have stringent obligations to children, but bystanders as well. If I am wrong, then employers are completely off the hook. Still, the duty on parents not to pursue certain careers remains.

III

In the previous section, we have seen that it is in fact problematic for employers to require family separation when work can be carried out in conjunction with the discharge of one's parental obligations. We have also seen that it is problematic for parents to choose careers that take them away from their children for long periods of time when other decent jobs are available. Recognizing the problematic nature of family separation does not amount to problematic discrimination against parents, since being a parent is not an arbitrary feature of the person, but a moral relationship that gives rise to stringent obligations on her part to protect and promote the interests of her child, including the core interest that children have in enjoying on-going love and care from each of their competent parents. Moreover, children arguably have a right against all members of society that they do not avoidably contribute to a situation where their core interests will be left unprotected for a morally significant period of time.

If I am right that Brock is too quick in accepting the separation of competent parents and their children at the domestic level, what follows for temporary migration arrangements? After all, when it comes to temporary migration, the final decision to separate families does not come from employers at the host society. It is rather the host state who excludes temporary immigrants from bringing their families with them so as minimise the cost of temporary migration, including costs that may fall on employers. Given that temporary immigrant workers are not being forced to immigrate in the first place, why can't host states choose to offer the benefit of migration only to those willing to make use of the benefit in the least costly way?

In an ideal world where temporary migrants were in fact moving temporarily abroad in order to advance important life plans as opposed to tackling economic disadvantage at home, host

states could assume that people were in fact making the best decision for themselves and their families.¹¹ They could then assume that parents would simply let go of the opportunity to move and seek instead commensurable opportunities at home. The reality, however, is that many low-skilled temporary migrants see migration as in the interests of their children, since they perceive the improvement of their economic situation as something that is *vital* for their child’s future, and something worth pursuing despite the high costs involved.¹² When affluent liberal states implement temporary migration arrangements that require family separation, they are implementing an arrangement that will foreseeably lead to a situation where children will be left behind for significant periods of time. Of course, many of these children will be adequately cared for by another parent, family members, neighbors, and friends, but this will not protect them from the negative effects of being temporarily separated from at least one of their competent parents.¹³ It will also not protect them from the moral loss of not enjoying one of the core goods of childhood for a significant period of time: the good of a loving relationship with each existing competent parent.

Does that mean that states should simply close their borders to these workers, so as to prevent them from making a decision that is detrimental to their children’s well-being and their ability to lead good childhoods? Indeed, should states respond to the risk of wrongdoing in the area of temporary migration in the same way as they should respond to the ‘brain drain’: by excluding migrant

¹¹ For a discussion on the reasons for temporary migration, see Ottonelli and Torresi 2012.

¹² See Gheaus 2013a, 2013b, 2014.

¹³ *Ibid.*

workers from crossing borders when their inclusion would contribute to harm in their state of citizenship?¹⁴

It is not surprising that the family separation that comes with temporary migration has been labeled “care drain” in the literature, for both forms of migration share a similar structure. In the case of the brain drain, high-skilled workers leave fellow citizens in a situation where they lack adequate access to their human right to health care and education. In so doing, host states enable harm by enabling the unfulfillment of basic human rights.¹⁵ In the case of the care drain, low-skilled workers leave children in a situation where they lack adequate access to a loving relationship with at least one of their competent parents.¹⁶ In so doing, host states enable harm by enabling a situation where a core interest of the child is left unprotected. Indeed, in the same way as one could make a strong case for the claim that host states should not enable harm by implementing migration arrangements that avoidably lead to the unfulfillment of basic human rights, host states should not enable harm by implementing migration arrangements that lead to a situation where children’s core interests are left unprotected.

Despite the similarity between the brain drain and the care drain, there is an important difference between these two cases, however. Whereas the doctor, nurse or teacher cannot bring her fellow citizens with her to a host society, immigrant workers can bring their children with them. That is, the harm that follows from the care drain as it pertains to children can be avoided by a

¹⁴ For a defence, see Ferracioli 2015.

¹⁵ *Ibid.*

¹⁶ Some of the care drain is also a result of immigrant workers leaving behind adult family members in need of care (i.e., relatives who are old or have a disability). In this essay, I am only focusing on children, because I assume that a *loving* parent-child relationship cannot be adequately replaced by other relationships, whereas caring relationships between adults can.

response other than closed borders: by allowing these workers to cross borders *with* their children (and the children’s other parent if there are any).¹⁷

In response, Brock might insist that the discussion above fails to acknowledge the tension between rights and numbers. Expecting host societies to design temporary migration arrangements that protect the right to family life prioritizes rights in a way that renders wide access to such arrangements much less feasible. She might also claim that a further compromise is needed here, and that if I am right to suggest that a right against parent-child separation is non-negotiable, then temporary migrants should be charged with covering all the expenses of their children, and should only be allowed to immigrate if they can show, prior to immigration, that the family unit can be self-sufficient during their time abroad.

It is true that a right to family life increases the overall costs to the host society, potentially rendering them less feasible. But feasibility of an arrangement is not only a function of the costs. The rationale for their pursuit matters a great deal as well.¹⁸ Temporary arrangements that allow children’s inclusion can garner public support given that citizens in affluent liberal states tend to be somewhat sympathetic to the plea of children in other parts of the world. It is not a coincidence that international organizations such as Oxfam and Amnesty International tend to use the image of children to raise funds in their global appeals. Even people who affirm that citizens in poor nations should take responsibility for their own predicament and seek positive change via political means

¹⁷ Anca Gheaus and I disagree about the importance of family migration since she does not believe that it is practical for migrant workers to bring their family with them. See Gheaus 2013a, 2013b, 2014. I think that the question of whether it is practical depends on the rights that host states extend to families.

¹⁸ For a helpful discussion of the concept of feasibility, see Lawford-Smith 2013.

are likely to be sympathetic to the predicament of children in the global south.¹⁹ Again, it is not surprising that Peter Singer's famous pond thought experiment made use of a child as opposed to an adult.²⁰ Host societies can advocate for the right of temporary migrants to bring their children by reference to the child's interest in enjoying an on-going loving relationship with each of her competent parents.

As for the compromise of expecting temporary migrants to bear all the costs associated with the migration of their children, it is important to emphasize that this would lead to the same problem of denying a right to family life in the first place: many temporary migrants who could not afford to bring their children with them would then choose to leave them behind. Again, they would do so not because they do not care about the protection of their children's interests, but because they care far too much that their children have access to better nutrition, education, and housing than they can provide without migration.

This is not to affirm that temporary migrants suddenly acquire all the family-related rights that citizens have. For instance, it is certainly permissible to deny temporary migrants rights relating to procreation such as subsidized IVF treatment or paid parental leave. Temporary migrant workers do not have a claim on the host society that they are supported in becoming parents, but their children do have a strong claim on the host society not to be separated from their parents, and once they arrive in the host state, they have a justice claim on their state of residence *not* to be placed in a position where their rights to health care and education go unfulfilled.²¹ The upshot here is that although temporary migrants must be expected to cover some of the costs of family life, they

¹⁹ See Schmitz 2000.

²⁰ See Singer 1972.

²¹ Cf. Ferracioli 2018.

should not be expected to cover the costs of children’s core rights, such as rights to health care and education.

IV

In the previous sections I have talked about parents as opposed to mothers, and I have referred to low-skilled work without being specific about what kind of work temporary migrants engage in when they arrive in a host society. Such choice of wording is warranted since family separation does affect immigrant parents, irrespective of their sex, and the work carried out by temporary workers cover many industries and fields.

Still, we should not pretend that family separation in temporary migration does not have a significant gender dimension. There is a large number of mothers who move in order to engage in care work in affluent parts of the world. The gendered dimension of this type of movement matters because children who are left behind by their mothers are less likely to be cared by their fathers than they are likely to be cared by their mothers when their fathers temporarily move abroad.²² In cases where mothers move, children are likely to end up with female relatives as a result.²³ (One irony here is that the caring that the mother now performs in developed states enables working parents, and, in particular, mothers, in those states to advance professionally and bring about a more gender just world in terms of workforce participation, whereas her departure

²² For a discussion of the empirical literature, see Gheaus 2013a, 2013b.

²³ Ibid. Note that nothing that I say here precludes the possibility that citizens of sender states have a stringent obligation to address the sexist norms and expectations that make fathers delegate their parental responsibilities to female members of the family. My point here is that such sexist expectations lead to foreseeably problematic outcomes in temporary migration and that host states have a responsibility to implement migration arrangements that do not enable such problematic outcomes.

does not necessarily improve gender justice at home since many fathers choose to pass on their parental duties to female members of the family.²⁴ Another irony is that both sides benefit from injustice of different kinds. Care workers from the global south benefit from the fact that many fathers from the global north do not shoulder their fair share of caring responsibilities. And parents, and, in particular, mothers, in the global north benefit from the fact that poor socio-economic opportunities in developing states provide them with cheap access to child care. In a just world, fathers would be equally involved in the caring of children, and parents would have access to decent work conditions in their own state of citizenship).

Now, it would be too quick to assume that a right of temporary migrants to bring their family with them would be enough to allow both citizens and temporary migrants to reconcile work and family, for in the case of care work, there are arrangements that are not in fact conducive to the protection of migrant children's interests. Indeed, domestic live-in caregiver arrangements, where immigrant workers reside at the employer's house, provide an example of a work arrangement that is not at all conducive to the reconciliation of work and parenting by immigrant mothers. This means that even if host states allow for those workers to bring their children with them, they will not be able to do so if the work requires residency at the site of employment. Does that mean that host societies must discriminate against immigrant mothers so as not to enable their separation from their children?

As I see it, the best solution here is for host societies to discourage such live-in caregiver arrangements and encourage institutional childcare arrangements, by (say) heavily subsidizing access to child care centres. Not only will such arrangements

²⁴ See Gheaus 2013b, 15.

minimize the possibility of domination and exploitation suffered by care workers, but will also create the conditions for immigrant mothers to bring their children with them when performing care work in the developed world. This approach better enables the realization of gender justice both at the domestic and international levels.

This is not to deny that some working parents in developed states do need additional care and cannot in fact fit their working hours around child care centres. This is true of parents who work night shifts, or who need to commute long distances or engage in short-time travel for work. This means that such working parents do have a genuine need for live-in caregiver arrangements and host societies should be able to accommodate that. Still, it is also true that many parents choose living in care work because it is convenient, and not because they could not otherwise reconcile work and family. In such cases, increasing the options for them would come at a cost of decreasing opportunities to the mothers of the global south. I hope it is clear that the requirements of justice are more pressing than the desirability of increasing people's autonomy, including increasing the autonomy of working parents who already have access to decent employment and affordable child care outside the home.

Conclusion

In this article I have argued that, contra Brock, it is problematic for host states to decrease the costs of temporary migration by putting children in a situation where they spent significant periods of time without one of their parents. The discussion does not vindicate the interests of temporary migrants to bring any family member with them, and so it may well be that Brock is partly right. Still, I hope to have made it clear that no amount of savings or

remittances justify placing children in the precarious position of lacking access to a loving relationship with at least one of her competent parents for significant periods of time.

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