

The Ethics of Migration Policy Dilemmas

Temporary Migration Bans, Gender, and Exploitation. A Response to Patti Lenard (2021)

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Patti Lenard (2021) argues that temporary emigration bans are not inherently morally impermissible; if such bans were to effectively help defend human rights, then we might have good moral reasons to permit those bans. Such bans are, however, unlikely to be morally permissible as a matter of practice; Lenard argues that, under most real-world circumstances, they are likely to do more harm than good. In this paper, I want to offer both some support and some criticism for Lenard's view. I want to support her assessment of the moral impermissibility of such bans as a matter of practice; indeed, I want to add some weight to that assessment, by providing some additional reasons for this evaluation. I want to criticize, however, Lenard's defence of the theoretical moral permissibility of such bans. There is, I believe, an asymmetry between the right to exit and the right to enter, such that even temporary and limited violations of the former cannot be justified with the tools Lenard provides.

Emigration Bans in Practice

I want to discuss my position here by noting Lenard's sensitivity to the structural disadvantages faced by women who migrate for work as domestic labourers. They are disadvantaged by migration rules -- including formal legal conditions on residence, an absence of political voice, and so on. But they are further disadvantaged by the intimacy of work as domestic labourers -- work which is frequently done behind closed doors, in the absence of effective oversight. Under these circumstances, we would expect to see some of those who employ domestic labourers engaging in abusive and exploitative practices as regards those labourers; those who employ household workers to have the opportunity to extract as much labour as they can from those workers, and will often choose to do so. The employer might speak, in public, about the dignity they provide their workers; but, when opportunities to deny that dignity in favor of exploitation are available, it may be easy enough for them to ignore the moral considerations, and choose instead that policy that

maximizes their own self-interest.

These thoughts are relevant, I believe, because something very much like this set of circumstances is held not only by some individuals employing domestic labourers, but by some states from which those labourers emigrate. That state is being asked, by those defending the temporary ban of migration to abusive states, to take its first interest as being the welfare of those who seek such migration. That state, however, has a significant interest in ensuring that such migration takes place nonetheless - and likely has the same ability to engage in moral self-justification that we have imagined holding true for the migrant's employer. Those states from which migration occurs are frequently dependent upon the remittances produced by the migrant for their financial health. By the late 1980s, for instance, these remittances were the second largest industry in Sri Lanka -- behind only the production of tea, as a source of state revenue ([Bandarage 1988](#)). Cynthia Enloe ([2014, 320](#)) describes states like Sri Lanka as having structural interests in doing whatever is needed to ensure the continued emigration of their young citizens abroad:

“Government officials from the sending countries have become addicted to the remittances that their women domestic workers send home. That economic addiction makes them reluctant to insist on defending the rights of their citizens working abroad.”

The Philippines are an even more stark example of state dependence on foreign remittances. Robyn Rodriguez describes the Philippines as a “labour brokerage state,” whose fiscal survival depends upon developing and exporting a steady stream of temporary migrants; nearly ten percent of the population ends up working abroad, in over two hundred countries ([Rodriguez 2010](#)). What is worth noting, here, is the active role taken by the government in developing and marketing its migrants abroad. Migrants are required to take an orientation seminar prior to their departure; Rodriguez describes one theme of this seminar as the duty of the migrant to represent the Philippines abroad -- largely through presenting one's self as a “good and docile worker” to the society in which one labours ([Rodriguez 2010, 112](#)). That docility is drilled into the migrant, but also serves as a key selling-point for those hiring temporary labour abroad. Christine Chin describes an interview with the labour-attachés of the Philippines and of Indonesia, in which each insisted their own women were more docile, and therefore less likely to cause “any problems” when hired ([Chin 1997, 366](#)). This hoped-for docility is useful not only abroad, but also when the government of origin extracts wealth from the remittances sent home by temporary migrants. President Ferdinand Marcos overestimated this docility, when in 1982 he sought to mandate that up to 70 per cent of all wages be sent back to the Philippines -- a proposal which led to demonstrations in the streets of Manila ([Wozniak 2015, 103](#)). Continued state efforts to extract wealth from migrants continue, with Representative Roy Señeres pushing in 2014 for a law mandating passport non-renewal for labour migrants who did not send home adequate remittances; all this was against a background in which temporary migrants from the Philippines sent home, in 2012, over twenty-one billion dollars ([Santos 2014](#)).

Why are these facts relevant, in the present context? They are important, I think, because they suggest to me that the state sending temporary migrants abroad is unlikely to be morally impartial in using any power it might have to prevent labour migration. Those who employ domestic labourers are structurally positioned so as to be likely to be corrupt and

self-justifying in trespassing against the human rights of their domestic labourers; we should not expect those employers to act, on their own initiatives, in defense of worker's rights. Neither, however, should we expect that a government dependent for its financial success upon labour emigration - especially when such emigration is gendered, and premised upon gendered concepts such as 'docility' in marketing -- to act on their own initiative in defense of workers' rights abroad. What we would expect, instead, is that such bans would be as likely to be used as tools for political gamesmanship and disciplining -- ways of making emigration more difficult, when women start to become too public and vocal about their ill-treatment abroad -- as for anything more noble. One way of expressing this point is to say that, even if gendered paternalism is defensible in practice, we should not expect that every policy described by a state of emigration as paternalist is actually defensible on such terms. All too often, what might be described as protection for women might in fact be protection of the state. That state, after all, is not simply a political agent, charged with the defense of temporary migrants along with other citizens; it is a participant in the international market for temporary labour, and we would be unwise to expect it to fail to respond to market forces with at least some degree of self-interest.

Lenard will not be surprised by these facts, of course, and nothing I say here is intended to disagree with her presentation of the circumstances of labour migration; I offer these thoughts merely to reinforce her condemnation of emigration bans in practice. Things are, I think, even more bleak in practice than her own view suggests, and I present these facts merely as additional reasons to think that emigration bans are rarely if ever a good idea in practice.

Emigration Bans in Theory

Where Lenard and I disagree, I think, is over the theoretical moral defensibility of emigration bans. Lenard argues that the right to emigrate is not as absolute as we tend to think, and that the most stringent right to exit applies most stringently only in response to antecedent cases of persecution. She argues, further, that temporary bans to particular places are less morally troubling than general bans on exit, and might be capable of being harmonized with the right to exit rightly understood. I disagree with both parts of this view.

To explain why, I might start by noting that residence within a given territory is best understood as a sort of relationship -- to a place, to particular other people within that place, and to a state presuming jurisdictional rights over that place. We generally take it for granted that there are more stringent requirements -- a higher burden of justification -- on those seeking to prevent exit from a relationship, in comparison to the one seeking to prevent entry into that relationship. I can prevent you from entering my house, without showing much more than the fact that I don't want you in it. I cannot prevent you from exiting my house, however, without showing something quite dramatic -- perhaps you are in the process of stealing my watch, or you are infected with something quite nasty and must be quarantined. The fact that such an asymmetry exists may have more than one moral explanation -- we might look to the effects of exit bans on one's ability to make plans with others, or perhaps the centrality of certain sorts of negative freedom -- but I think it is hard to dispute that something like that asymmetry is defensible.

This, however, means that we might not want to take persecution - as Lenard does - to

be a morally central concept here, or use that notion of persecution to develop a more narrow and stringent vision of the right to exit. The notion of persecution is important in migration law; but it is generally regarded as a way of defeating the general right of a state to refuse immigration. The Geneva Refugee Convention, most notably, takes those facing persecution as having a right to cross borders that would otherwise prove closed to them. But there does not seem to be any similar reason to take persecution as relevant in the construction of the right to exit. Lenard's logic here, of course, is that the state precluding exit might permissibly violate the right to exit -- in the broader sense -- to prevent violation of such rights abroad. But I do not think that there is any reason to differentiate between the narrow and broad conceptions of the right to exit in this way. If Lenard wants the narrow conception to have lesser normative power than the broader, then I think she is simply wrong -- she is using a concept borrowed from asylum law that does not have an adequate relationship to the moral right to exit. If she wants the broad conception to be "nearly as important" (Lenard 2021, 7) as the narrow, then it is not clear that we need the narrow conception at all -- and it is equally unclear, to me, that these basic human rights can be overridden even in the name of other human rights.

I am, finally, in disagreement with the thought that a temporary ban to a particular place is significantly less troubling than an exit ban simpliciter. Rights violations do not become rightful simply because they are particularized. Your right to freely practice your religion is disrespected when I refuse you the right to worship as a Christian; it does not matter that I can say, correctly, that Christianity is only one among many religions, and that you are still capable of worshipping as a Hindu or as a Buddhist. The analogy is not perfect, of course; religions are personal for their adherents, in a way that countries to which one travels are generally not. As a matter of moral logic, however, the case seems parallel; all general rights are practiced in individuated ways - including the right to emigrate, and the right to practice one's religion - and all rights are therefore troubled by the coercive preclusion of the particular exercise of that right one has chosen. Similar considerations seem to apply to the temporal limitations Lenard discusses; she argues that the temporary nature of the ban makes it less morally troubling. From the fact that a rights-violation will end, however, it does not follow that the violation is not wrongful; and a ban on exit to a particular place -- especially if that place is the chosen, or only, location to which one might actually exit -- does not become rightful simply because the ban will, eventually, end.

I will conclude this brief paper by expressing my gratitude to Lenard for her work, and for the opportunity to engage with it. The rights of temporary labourers are of central moral importance, and are all too often ignored by political philosophers. Lenard is to be commended, both for directing her own philosophical skills to this topic, and for encouraging others to follow her lead in doing so.

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About the “Dilemmas” project

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

Suggested citation

Blake, M., (2022) ‘Temporary Migration Bans, Gender, and Exploitation: A Response for Patti Lenard (2021)’, Commentary for ‘The Ethics of Migration Policy Dilemmas’ project, Migration Policy Centre (MPC), European University Institute (EUI).

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