

The Ethics of Migration Policy Dilemmas

Responding to Critics

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In “Restricting Emigration?”, I defended emigration bans and conditions imposed on women or women-dominated labour, in principle but not in practice ([Lenard 2021](#)). The basic facts of the matter are these: migrants from ASEAN countries, especially but not only women, have only limited migration opportunities. They choose to take up temporary labour contracts in Gulf States for many reasons, including that the employment opportunities in their home states are limited, and correspondingly that those abroad may be more plentiful and lucrative. Migrants who labour abroad typically send remittances home, from which both their own families and the home state benefit. The question I set myself was, given the facts just outlined and in the face of particularly severe rights abuses in destination countries, are there any convincing justifications for time-limited, country-specific emigration bans?

In my original article, I argued yes, in principle, when there is a clear connection between the stated policy objective and the likely outcome. In this case, the stated policy objective is the protection of (women’s) human rights. So, in order to justify the constraints on migrant workers, including women, I argued that clear evidence that they can work to protect human rights had to be proffered. But, I argued, in practice the bans are rarely effective at offering actual protection, and therefore cannot be justified under current conditions. I deliberately left open the possibility that under alternative conditions, such bans or conditions could be justifiably adopted. My respondents are united in their agreement that such bans are in practice impermissible, outlining how they may induce a wealth of harms even beyond those I mentioned. However, they are considerably more reluctant to agree that bans may be justified in principle.

In what follows, I consider three related objections raised by my respondents. First, they say, I am too prepared to permit the violation of the right to exit; in particular, they argue that even evidence that emigration bans and conditions work would be insufficient to justify constraining the right to exit. Second, they allege, states that offer “protection” reasons for bans and conditions are insincere, and in any case, the importance of protecting human

rights abroad is insufficient to permit the violation of the right to exit; in particular, the bans violate the autonomy of women migrants in problematic ways, even if they would result in better protection abroad. Third, they argue, women-specific constraints in particular threaten to undermine rather than further the protection of women's human rights.

Is evidence that bans and conditions work sufficient to justify them?

Michael Blake, Igor Bosc and Neda Wadhawan, and Upasana Khadka all agree fundamentally that evidence in favour of the effectiveness of movement constraints is insufficient to justify them. Citing the Human Rights Declaration's commitment to protecting "freedom and equality in dignity and rights", Bosc and Wadhawan defend the "moral exigency" of free mobility. Protection reasons should not, they say, take precedence over these rights ([Bosc and Wadhawan 2022, 4](#)). Michael Blake similarly points to the importance of the right to exit – which, he says, I wrongly defend by drawing on the asylum literature that focuses on the importance of exiting to avoid persecution, and which he has read not as a requirement to permit exit, but rather as an argument for defeating the presumption that states may exclude potential migrants ([Blake 2022](#)). For Blake and Bosc and Wadhawan, the right to exit one's state is to be defended not only as a means to avoid persecution, but to exercise autonomy across a wide range of dimensions of one's life. I do not disagree with these views, although I believe Blake understates the foundational role that protection plays in justifying the right to exit (see [Whelan 1981](#); [Lenard 2015](#)). More specifically, if the job is to assess whether a constraint on mobility is a human rights violation, the first question must be whether the right to exit to escape persecution remains intact. Time-restricted, single-country and single-issue bans undermine neither the right to exit, understood in protective terms – the ability to seek protection in case of persecution or war remains intact – nor the right to autonomy, or at least not very significantly.

Blake writes, "rights violations do not become rightful simply because they are particularized" ([Blake 2022, 3](#)). However, this claim overstates the case in general, and the one I have made in particular. In some cases, it is permissible to constrain the scope of rights where there is evidence that doing so produces a greater good, in this case, more and better rights protection. Bosc and Wadhawan rightly challenge this claim in the cases under consideration, noting that in those cases, women start out with so few opportunities that such constraints have an outsize impact on their autonomies. So while my autonomy may be not much affected by a short-lived ban on my migrating to labour in a Gulf State, ASEAN women's autonomies will be severely affected by such a ban ([Bosc and Wadhawan 2022](#)). Moreover, emphasizes Khadka, as do Bosc and Wadhawan, women want these migration opportunities, in spite of the risks they pose ([Khadka 2022](#)), and denying them these opportunities on protective grounds is problematically paternalistic. I am in broad agreement with such a conclusion, as evidenced by the fact that I do not defend constraints on movement under present conditions.

However, it is crucial to acknowledge the autonomy issues on both sides. In general, migrants are coming from and moving to states in which labour rights are not well-protected, so in both states they are subject to rights violations. It is worth emphasizing here not only that Gulf States have a spotty record on protecting the rights of labour migrants, but that in many cases they expressly insist that domestic labourers – mostly women – are entitled to

even fewer rights than labour migrants in general. An additional fact is that women migrants are moving between similarly patriarchal home and host states, and so their opportunities for paid employment in both home and host states are limited.

So, while it is certain that women who are constrained from migrating experience a reduction in autonomy, so do women migrant labourers whose rights are severely constrained in host states, where they are subject to abuse, much of it sexual, and exploitation – often so drastically that they can be raped and killed with near impunity. Blake and Bosc and Wadhawan emphasize only the autonomy in moving, noting the poor working conditions in sending states; but the poor working conditions in host states are also severely autonomy-reducing. They emphasize that poor employment opportunities and conditions motivate movement, and strongly imply that these conditions are sufficient to justify migrant workers' right to exit. However, they are sufficient only if the conditions awaiting migrant workers at their destinations are substantially better, and they are usually not. The argument from the importance of protecting autonomy thus does not do enough work to undermine the (in principle) permissibility of exit bans.

Is protection the sincerely held reason for exit bans and conditions?

A second objection my respondents raise is that, contra what I suggest, states that adopt bans are not sincerely operating from the imperative to protect their citizens, at home and abroad. Legitimate states are, of course, required to protect the rights of their citizens and residents. But it is worth noting that the political theory articulating the role that states ought to play in protecting citizens abroad is thin and therefore opens more room for the kinds of deliberations that occupy me and my respondents. While I believe my respondents agree with the uncontroversial claim that states must protect the rights of their citizens, they are sceptical that sending states that adopt constraints on movement are motivated by this imperative.

Blake reports a story of two government officials from different countries taking pride in their country's particularly docile women, who were therefore presumed less likely to protest unfair working conditions and would increase demand for the exploitable labour of their compatriots. Rights-protection, on the other hand, did not figure in the officials' boasting. Sending states have strong interests in remittances, he argues, and therefore in securing migration opportunities for their citizens in general. But his observations do not really explain why states would then adopt a ban on movement, since doing so goes against his account of state interests; he speculates that bans would be adopted for reasons of "political gamesmanship and disciplining", intending to quiet women's complaints when they are "too public and vocal about their ill-treatment abroad" (Blake 2022, 1). He understands the motivation to adopt bans and conditions to be one of punishing women who lobby for rights protection, and not in fact to protect those rights. I am prepared to accept the possibility that such motivations propel the adoption of some bans, though Blake provides no evidence that these are operative in general and they do not explain why some states might adopt emigration conditions rather than bans. However, even imperfect states that rely heavily on labour emigration may well have an interest in protecting their citizens abroad. The implication that they do not, and therefore would never or rarely prioritize the rights of their citizens over economic benefit, appears rather condescending to me.

Upasana Khadka offers an alternative reason for scepticism about the motivations of states that adopt emigration bans, namely that the adoption of bans enables their complacency in rights-protection; once a ban is in place, they may freely wash their hands of the need to adopt further strategies to protect their citizens abroad ([Khadka 2022](#)). She argues, persuasively, that a state keen to protect the rights of citizens abroad has many alternatives available, including pre-travel training and cultural orientation, intended to provide them with resources they need to protect themselves. (Note that the result here is that Khadka and I agree that some conditions on emigration may be permissible, in the present context, even if bans are not.) Since, as the evidence suggests, the adoption of bans often means that migrant workers travel illegally, an added harm is that such irregular workers cannot benefit from the very training that might protect them while abroad; these official training programs are available only for those enrolling in regular migration programs. Khadka persuasively makes the argument that travel bans, justified on protective grounds, are not only ineffective, but also hypocritical.

Do women-specific constraints raise additional moral challenges?

Amy Reed-Sandoval, Bosc and Wadhawan, and Khadka all focus on women-specific constraints on movement, doubting in particular that they are sincerely meant to be protective ([Reed-Sandoval 2022](#)). Khadka suggests such bans are driven “by a general stigmatisation of female emigration” ([Khadka 2022, 3](#)). Bosc and Wadhawan suggest that exit constraints (on women) are never about protection, but simply one more manifestation of patriarchal institutional structures and norms that continue to disadvantage women. Although they accuse me of elevating “the protection of women as a paramount moral principle beyond questioning”, and correspondingly of treating women’s mobility as a “secondary moral principle that can be temporarily suspended” ([Bosc and Wadhawan 2022, 4](#)), what I in fact insist on is that states – even undemocratic states with a history of discrimination – are obligated to protect the rights of their citizens and, as I suggested just above in response to Blake, they often do. I think it is fair to conclude that the Philippines, in adopting bans and then negotiating with receiving states to better protect their citizens, was at least in part motivated by a desire to protect them.

What is controversial is whether this obligation persists when citizens are abroad, and in my view, it does especially (as is true in this case) where host states are unwilling to offer this protection. It may be that sending states are hamstrung – though Khadka offers many policy instruments sending states have, but are not using, to protect their citizens abroad ([Khadka 2022](#)) – but the obligation persists, and although the sending states in the case at issue are imperfect protection agents, they possess it nevertheless. The possibility that they are motivated by the need to protect their citizens is a live one, in other words, despite all the reasons Blake, Bosc and Wadhawan present to be sceptical of it. Given that sending states stand only to lose if migrants cannot move, it is at least plausible that where constraints are adopted, they reflect morally obligatory, protection-based reasons, and not merely patriarchal ones.

Unlike Bosc and Wadhawan, who suggest that the failure of host states to protect the rights of women is sufficient to undermine any plausibility of the claim that movement constraints are adopted to protect them, Reed-Sandoval considers whether – even if such bans are

justified with respect to protection, and even if they do offer protection – they ought to be resisted because of the ways in which they reinforce rather than undermine “pernicious ideas that ideas that women’s freedoms ought to be limited (by men) for their own protection” ([Reed-Sandoval 2022, 2](#)).

This way of objecting to my defense is an important one, because it acknowledges rather than diminishes the rights violations to which women are subject abroad. Reed-Sandoval worries that defending movement constraints in the present opens up the possibility of a slippery slope: “emigration bans that explicitly target women could, even if effective, open the door to pernicious gendered paternalism in immigration law and public policy” ([Reed-Sandoval 2022, 3](#)). In so doing, she presents me with a dilemma that I had not considered in my original article: What should be done if a specific policy might achieve better rights protection in the short term, as migration constraints may do, but could serve to sustain the patriarchal narrative that persists in securing a second-class status for women in the long term?

I think this is a very good question to ask, and I am afraid I do not have a good answer. All I can say is that it is very difficult for me to pass up an opportunity to protect rights in the present in exchange for a potential good in the future. In the meantime, she and I agree that wherever we land with respect to movement constraints in the case under consideration, our collective objective must be to “address the underlying inequalities that make emigration for temporary, low-wage, stigmatized labour a desirable option for many women in the first place” ([Reed-Sandoval 2022, 3](#)).

My respondents and I face a difficult challenge: how best to advocate for the rights of (would-be) women migrant workers whose rights are insufficiently protected, whether they migrate or (are forced to) stay home. We share a commitment to listening to women’s voices, and to integrating such voices in the policy proposals, and moral defenses of such proposals, we produce in our aim to identify the best way forward for protecting their rights under constrained circumstances.

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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.

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