

# The Ethics of Migration Policy Dilemmas

## Triple Benefits for Global Justice: A Response to Bauböck and Ruhs (2022)

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How should we reconcile considerations of global justice with considerations of domestic justice? This has been a vexing question in much of political theory over the last 20 years. Equally heated has been the debate over the role of Temporary Labour Migration Programmes (TLMPs) in any consideration of global justice – can they serve as a tool of redistribution, as Patti T. Lenard and I have argued in an earlier piece (Lenard and Straehle 2011), or do they function as part of a neoliberal policy that accentuates further the inequalities between those who are born into nobility in terms of citizenship, as Joe Carens (1987) has originally argued, and those whose citizenship doesn't provide them with a comparable set of opportunities?

Rainer Bauböck and Martin Ruhs (2022) suggest that TLMPs, if properly designed, can both serve global justice and allow governments to fulfil their role and responsibilities towards their citizens in the realm of domestic justice. Then, they argue, TLMPs can actually provide triple benefits: for migrants, sending and receiving countries. Importantly, Bauböck and Ruhs stipulate that we should think of triple benefits as actor-related: possible gains can only be identified as such by the representative actors involved. This, they suggest, distinguishes their account of triple benefit from others that think 'triple wins' from TLMPs can be independently assessed. Instead, Bauböck's and Ruhs' definition of triple benefits demands a system of fair representation of interests, as I will discuss below.

I agree that the proposal submitted here is an improvement over the status quo – not hard to do – and also possibly a way to realise important rights for temporary migrants in host countries. My worry is more about how the triple benefit route might affect individual temporary migrants, and especially women and their status, in the host society and in the country of origin. One way to phrase this worry is to say that while temporary labour migration has so far been an individual project for individual migrants – albeit one often regulated through bilateral agreements between sending and receiving states – pursuing triple benefits could possibly instrumentalise individual migrants for purposes of economic benefit for both sending and host states, rather than providing them with the rights

protection that Bauböck and Ruhs hope to establish. Before I discuss this aspect of TLMPs and the revisions Ruhs and Bauböck suggest, I want to pause a moment to say something about the global justice aspect of the triple benefits proposal. I then discuss the kind of contribution that TLMPs make towards global justice in the Bauböck-Ruhs proposal, namely opportunities that allow for payment of remittances, before discussing my worry about instrumentalisation of individual migrants.

I will leave aside a discussion of the domestic aspect of the revised TLMPs, which I find very plausible and convincing. One quibble one might have about the proposal is that the authors propose the realisation of triple benefits based on the assumption that governments of recruiting states have duties of global justice, and that one way to satisfy those is to implement the kind of TLMPs that allow for the distribution of access to opportunities. Of course, if we are talking about domestic duties of global justice, we may wonder why governments of opportunity-rich states should opt for TLMPs and not for more demanding redistributive policies. If governments have duties of global justice, then government action in this domain should not depend on their own benefit from satisfying such duties, as the triple benefits framework suggests. Instead, and in the first instance, duties of justice come to (governmental) actors because of the most basic ethical principle of 'do no harm:' sometimes, governments have to act in order not to harm individuals, inside and outside of their borders. Negative duties, to recall, are the most binding duties – they are the ones about which there is no room for negotiation, whereas positive duties, at least in a Kantian framework, allow for more individual digression. This is to say that the principle of 'do no harm' is the one for which consensus is more easily assumed – whereas individual theories may diverge on what form positive duties take. Bauböck's and Ruhs' discussion of justifying the kind of TLMPs they propose with the 'all affected principle' would fall into this way of thinking about duties: if TLMPs are not revised according to their proposal of negotiating them with representatives of migrants, sending state governments, and hosting state governments, then, so the premise, host state governments administering and enforcing current TLMPs neglect their negative duties towards hopeful migrants not to harm them.

Alternatively, governments have duties towards individuals because of the rights the latter are meant to have – the duties in question then arise from the demands of individual rights. Either way, it shouldn't matter that we can cushion host state governments' duties with the promise of one part of the triple benefits – if host states have duties of global justice, then that should suffice to make state governments change current TLMP policies.

A similar comment could be made about the proposal concerning transnational governance mechanisms that are to be mobilised to develop the kind of policies, together with state governments and representatives of temporary labour migrants, to help realise triple benefits. If we are able to mobilise this kind of engagement and agreement, why not use transnational governance to actually change migration regimes fundamentally, or other policies that hamper the economic development of many sending countries? However, Bauböck and Ruhs situate their proposal squarely within non-ideal political theory that accepts the domestic justice duties of state governments. Accordingly, any TLMP hoping for success will need to take seriously the partiality concerns of domestic governments towards their own citizens. Partiality, in other words, is a feature: it is an integral part of their

proposal to satisfy domestic social justice.<sup>1</sup>

So let me say something about their conception of global justice. In my view, global justice in Bauböck's and Ruhs' proposal is underdetermined: we can broadly construe it as distributional in character, satisfied through remittances between sending and receiving societies. Note that while the authors originally argue for global justice, and propose to take a neutral stance between those who ask for strong distributive global justice, and those who more minimally ask for weak cosmopolitan considerations, the argument for TLMPs as bridging the divide between domestic and global justice is meant to assure that temporary migrant workers have access to opportunity-rich countries. In this vein, the authors suggest that their proposal should be acceptable for both sides of the cosmopolitan debate. This may be so, but along the way, the definition of global justice proposed morphs into global utilitarianism. Global utilitarianism is not defined as explicitly as one might hope for, but I would venture that many cosmopolitans, myself included, would not readily accept a definition of global justice as global utilitarianism. After all, one of the reasons why Rawls' A Theory of Justice has been so very successful is its takedown of utilitarianism as out of line with the protection of individual rights.

One of the building blocks of global utilitarianism in the context of the proposed triple benefits are remittances that individual workers send back to their country of origin. Indeed, as the authors propose, remittances, as we know them, amount to larger money transfers to several countries today than any aid program provides. Note, though, that remittances don't benefit the poorest countries in the world since these are not the main sending countries. Instead, most remittances go to middle income countries – for example the countries of Northern Africa. These are the countries that provide for seasonal agricultural workers in the Spanish harvest, say. So, the proposal for triple benefits doesn't realise distribution to the hardest hit but only to those relatively less well-off than receiving countries. This is not an argument against TLMPs as suggested here, but should make us realise how limited the scope of global redistribution through TLMPs is. And at this point, we can easily convince ourselves that any kind of meaningful redistribution is better than what we have now.

But just to reiterate, remittances and access to employment opportunities that TLMPs allow are the important substantive parts of the triple benefits proposal from the global utilitarianism perspective. So the benefits that accrue to sending states and temporary labour migrants are monetary and take the form of employment opportunities and remittances. In light of this, several countries now train more professionals in some domains than their local economies actually require. To illustrate, the Philippines has for a long time trained many more nurses than the local health care sector requires or can employ. Nurses are trained for export, as it were, and many of them move to Canada or other countries in the Global North. So far, so fair. The worry I have is how this path affects their rights, and their standing in both sending and host society. For instance, women nurses in the Philippines are considered an important economic asset since their emigration helps the country through remittances, as discussed. However, as Bauböck and Ruhs acknowledge, this kind of career path, while supported by the government, takes a heavy toll on their private lives – many women having to leave behind their family and children, to work in other countries. Even if a triple benefit TLMP regime might allow for family reunification in host societies, we may

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1 Thanks to Lukas Schmid for the suggestion to clarify this point.

wonder to what extent women would benefit from it. Consider the caregiver migration regime in place in Canada until 2019 (see [Brickner and Straehle 2010](#); [Straehle 2019](#)).

This programme officially allowed women caregivers to bring their children with them – but very few women made use of this clause, simply because of the long hours they worked, which made childcaring duties very complicated to accommodate. Similarly, if women migrate to maximise their benefits in the period of time away, as [Ottonelli and Torresi \(2022\)](#) argue, then having to satisfy childcare obligations may hamper rather than help their migration project. And of course, not very many current programs allow for family reunification. In fact, instead, some TLMPs are designed to capitalise on women’s family obligations. For example, Spain operated for some time a temporary labour program targeting young Moroccan mothers as seasonal agricultural workers, with the assumption that having left their young children back home, they would not overstay their work visas ([Zeneidi 2017](#)). How to accommodate childcare obligations is still an unsolved puzzle for many women in the gendered world in which most women make decisions about their lives. To be sure, Bauböck and Ruhs suggest that these kinds of considerations would be brought to the table through the representative mechanisms that they suggest should regulate TLMPs, as I will discuss below.

Another worry about women’s standing and rights comes from an underlying premise of labour migration regimes that would remain unchanged in the triple benefits proposal, namely that they must benefit the host society. National immigration regimes, including TLMPs, prioritise for skilled labour immigration, yet treat the work of women as unskilled ([EIGE 2021](#)). Most migration regimes are geared against the professional expertise and skill of women. Again, consider the Live-In-Caregiver programme: Canada has a growing care gap and relies on female migrant workers to care for the very young or the very old. To qualify as a live-in caregiver, women had to show 12 years of schooling and either at least six months of training or twelve months of continuous employment with one employer in a care-giving field. In fact, 84% of caregivers originating in the Philippines, the most important source country for care workers in Canada, received a university degree before migrating, which over time became a requirement for work visas as Live-In-Caregivers.<sup>2</sup> Despite this explicit requirement for skills and education, Live-In Care work was qualified as “unskilled” in the Canadian migration system, making women applying for caregiver visas considered un-skilled. Such “de-skilling” of skills conventionally associated with women is ubiquitous in migration regimes that privilege those migrants who can provide ‘skilled’ labour for profitable sectors ([EIGE 2021](#)). The Canadian immigration website proposes that a person score maximum points for work expertise as a doctor, dentist or architect, i.e., for “professional jobs that usually call for a degree from a university” ([IRCC 2021](#)). The fact that many care workers had ‘a degree from a university,’ the diploma to prove it, and indeed were required to do so to obtain their positions in Canada in the first place, was lost in translation.

Again, Bauböck and Ruhs could argue that this problem is addressed through the setup of migrant representation in deliberating about the precise shape and form of TLMPs. We may wonder, though, to what extent de-skilling is not an integral part of the motivation for host states. Recall that one of the benefits for host states was that implementing the

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<sup>2</sup> For the following, see [IRCC \(2021\)](#).

kind of TLMP that Bauböck and Ruhs suggest would allow them to satisfy domestic justice obligations. These take different forms, of course, but not edging out local talent from the labour market is one important rule for host state governments and so is the satisfaction of specific economic and social needs. For both reasons, so called low-skilled TLMP have had such a success in many countries: low-skilled temporary labour migrants provide a work force for such economic sectors that are underserved by citizen workers, and they provide work often considered dangerous, dirty, and difficult. Given this background of countries' interests in TLMPs, it is unclear to what extent deskilling can be eradicated.

To actually realise triple benefits, the challenge would be to develop migration policies that accept the reality of women's lives: the social position of women in many societies, their possibilities to acquire skills – or lack thereof – their wish to care for their families, and the decisions they take within these parameters. As shown in the UN Global Compact for Migration, the importance of gender for matters of migration has been recognised in international law. Yet a systematic and integrative approach in policy-making that acknowledges how tightening of immigration rules and skills requirements makes individual migrants, and particularly female migrants, more vulnerable, is lacking. Bauböck and Ruhs mention that not being able to satisfy their own care obligations can be hard for many temporary labour migrants, especially maybe for women. And thus, this should be part of the negotiations with their representatives. However, if TLMPs are to play a fundamental part in the economic strategy of a sending country, we may wonder how effective this advocacy might be. If the goal is to realise triple benefits in the context of global inequality, we may instead worry about women's interests being rendered subordinate to the benefits of sending them to be employed in specific sectors.

To be sure, Bauböck and Ruhs could reply that nothing in their proposal suggests this outcome, instead pointing to the open-endedness of the process of negotiation they suggest. Yet this points to a problem rather than a solution: in the non-ideal theory that they want to build, nothing suggests that the kind of power imbalances that characterise the relationships between those who need temporary migrant labourers and those who want to send them, and between those who have labour to offer and those who want to employ it, are such that a fair negotiation is possible. In other words, the power imbalances are possibly skewed against sending states to the benefit of host states; they are certainly skewed against fair representation of migrants' interests. For individual migrants, there is simply so much at stake. Secondly, the representation of women's interests has historically not been at the forefront of domestic policies or labour representation. To make sure that their interests are not treated as an afterthought, Bauböck and Ruhs would have to show robust protections of these interests in the set-up of the negotiating process.<sup>3</sup>

Bauböck and Ruhs have provided an important analysis of how TLMPs could be developed to promote benefits for the host society, the sending society and the individual migrant. Lenard and I originally argued that temporary work should lead to the path of citizenship for individual migrants. And even with the revised proposal that Bauböck and Ruhs propose to protect individual rights of migrants, access to citizenship would still, in my mind, provide the best protection of the catalogue of rights that guarantees that migrants benefit from their migration projects.

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<sup>3</sup> Thanks again to Lukas Schmid for pressing me on this point and for helping to clarify it.

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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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