Mobility rights in an era of terror

Patti Tamara Lenard
Graduate School of Public and International Affairs
University of Ottawa

uOttawa

Here is a warning so you can't way you weren't warned

I am a normative political philosopher.

My focus is on justice in democratic states (what is *fair*), and how to balance collective goods against rights protection in ways that **treat all citizens equally**, including the bad guys.

uOttawa

My general goal/framework

To encourage wariness with respect to specific policies, and their pursuit, that have noticeable *negative* impact on the lives of minority communities.

These policies, if pursued badly, can erode the trust on which diverse democracies rely.

Earlier work focused on the pursuit of CT policies in general.

uOttawa

The human right at stake

The right to move freely, which is essential to living a flourishing (or even just a basic) human life

And especially, the right to *exit*

uOttawa

My question

Do policies adopted (in 4 democratic states) to combat foreign fighting undermine/violate the right to move freely, especially to exit?

(Canada, the US, the UK and Australia.)

uOttawa

The right to move freely

This right is explicitly(by courts or by constitutions) protected in all four countries we studied, including the right to move freely in one's state, the right to exit one's state, and the right to return to one's state.

The right to exit has a historically protective role, against oppressive states.

My answer

Maybe. But, what I can say is:

1) the right to exit is undermined by policies combatting actual/suspected foreign fighters *and many others,*

2) because the policies adopted to combat foreign fighting cast a wide net,

    2b) we should adopt a wary attitude towards claims that these policies are both evidence-supported and the least burdensome available,

    2c) we must insist on sunset clauses, and,

3) the impact may well be problematically discriminatory, and therefore exert harm that is worth weighing against supposed security benefits.

uOttawa

The empirical context

The context is the global fight against terror, which demands action by states to protect citizens from grievous harm.

Sovereign states are judged by their ability to provide safety and security to their citizens.

Immigration has always been a 'security' issue, but the target has changed from worries about migrants to worries about exiters.

uOttawa

The theoretical context

The alleged conflict between security and rights – one may well require sacrifice to protect the other.

I will in time resist this way of framing the issue, but first let me outline the empirical findings of the work.

uOttawa

Foreign fighters, general findings

All four countries agree that foreign fighters are a major security risk.

Public actors argue that contemporary foreign fighters are different than those in the past: part of the ideology of foreign fighter *trainers* is to encourage returnees to continue the battle 'at home.'

Therefore, new and special legislation is required to tackle the challenges posed by foreign fighters.

**** No notice is made of the ways in which these policies may, however, run afoul of democratically protected human rights.

uOttawa

How many people are we talking about?

Canada: 180 in total, 60 returnees

UK: 800 in total, 400 returnees

Australia: 200 in total, 40 returnees

US: 140 in total, fewer than 10 returnees

uOttawa

5 policies that make exit hard: An intro

No state has pursued all of the policies described below.

Each policy can be pursued more or less aggressively, having to do with how high the burden of proof is that the purpose of exit is to join foreign wars.

What counts as evidence of intention to join foreign wars can be biased against, in particular, Muslim or Muslim-seeming citizens, in ways that lead to the discriminatory undermining of their right to exit. **This latter worry is, at this point, merely speculative.**

1: Preventative detention

Detaining of individuals suspected of intending to join foreign wars (up to 28 days in the UK).

uOttawa

2: Declared area legislation

'Declared area' legislation lists specific locations to which citizens are not permitted to travel.

uOttawa

3: No-fly lists

Passenger-screening tool that prevents "specified persons" from boarding flights.

uOttawa

4: Passport cancellations

"High-risk travellers" can be denied passports. In some cases, passports can be seized by border guards and airport police.

uOttawa

5: Re-entry (denial)

Temporary exclusion, or penalties associated with return from suspected foreign fighting.

uOttawa

To recall:

The original motivation for this TSAS-supported project was the worry that basic rights of citizens in democratic states may be sacrificed, as states pursue policies that protect their national security.

uOttawa

Conclusion 1:

It looks like the number of people effected, that is whose right to exit is reduced or curtailed, by whatever combination of policies is adopted in any country is far higher than the number of estimated foreign fighters.

(** But, more work must be done to understand the *number* of people impacted by the listed policies, and for how long, and what they have sacrificed.)

uOttawa

Conclusion 2:

We must not lose sight of how policies *together* can serve to reduce a basic human right, and to refuse to ignore the possibility that it is being reduced *problematically*.

uOttawa

Conclusion 3:

There are many (maybe too many) cases where the 'no-exit' policies we have surveyed are applied in what are *believed* to be discriminatory ways.

The (alleged) discriminatory application of the US no-fly list is perhaps the best-known of these allegations, but it is not the only one.

uOttawa

Conclusion 4:

We should worry that these kinds of accusations –
false positives, hostility towards Muslims – will grow
around the additional policies that are adopted to
reduce foreign fighting.

The reason to be attentive is because we ought to
resist discriminating against others, and the
perception of discrimination against others,
especially when basic rights are at risk of being
undermined.

uOttawa

Conclusion 5a:

Security should not be understood as a singular concept, rooted exclusively in physical safety as political actors sometimes appear to suggest.

Security is a multi-dimensional concept, and protecting one dimension can be at odds with protecting another.

In particular, protecting national security by undermining the basic rights of only some citizens should, in our view, be treated as a security violation in and of itself.

uOttawa

Conclusion 5b:

If citizens in democratic states cannot count on having their basic rights protected – in particular, where this failure to protect basic rights is distributed unequally, so that only some categories of individuals must operate with a shorter package of protected rights – **democratic security** is at risk.

Security has an essential egalitarian dimension in democratic states.

uOttawa