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Susanne U. Schultz

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The Ethics of Resisting Deportation**

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Comment on Rutger Birnie: The Ethics of Resisting Deportation

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Abstract

This paper comments on a talk given by Rutger Birnie at the 2018 ZiF Workshop “Studying Migration Policies at the Interface Between Empirical Research and Normative Analysis”, September 2018, in Bielefeld. Birnie’s paper is available under doi: 10.17879/95189423213.

Keywords

Liberalism; disobedience; resistance; right to resist; duty to resist; anti-deportation

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Rutger Birnie tries to fill an important gap between normative approaches to resisting deportation and their empirical analysis by combining both. As migration research is increasingly confronted with moral dilemmas when requested for political guidance, and deportation constituting a particularly contested phenomenon herein, such engagement is very timely and needed. Still, it presents a balancing act, which is achieved quite successfully in some instances, building on a rich knowledge of the subject matter. While in other instances, the argumentation ought to be more convincing and empirically detailed.

The paper aims large. It tries to sketch out a normative framework on how to morally evaluate the acts and agents of resisting deportation to eventually provide recommendations for “sending” states. The agents referred to are deportees

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themselves, ordinary citizens, but also civil society organizations, representatives of local authorities, and the receiving states, which are supposed to accept their alleged nationals. The acts of resistance and disobedience described thus range from public contestation, non-cooperation and active frustration, as well as violent resistance. By linking in a “small but growing” body of literature hereto, the paper suggests to develop an “agent-sensitive account” in order to evaluate if an anti-deportation resistance against “unjust deportations” is justified as well as to better assess the agents implementing it. Thereby the text broadly follows the definition of John Rawls (1999) spelling out the resistance against deportations as generally justified when the administrative intervention reaches a “substantial and clear injustice” threshold.

Within the field of deportation studies, which in itself is deeply morally loaded, it is highly contested when, and if, such threshold is reached. As Birnie outlines “some believe all deportations are rights-violating and an unjustified exercise of political power (De Genova, 2002; Walters, 2002), while others insist that the state has broad discretionary powers to order non-nationals to leave the territories they control (Blake, 2010; Miller, 2016)”. In a similar vein, Clara Lecadet (2013) has summarized that expulsions are an engine of internal debate for liberal societies “seeming one of the principal sources of division, dissensions, and polemic, not only fostering political debate, but also community and humanitarian commitment as well as academic critique.” (p. 143). Birnie’s text perfectly links in this analysis, even by going beyond the internal to a partially trans- and international dimension.

The text argues clearly and in a well-structured and traceable manner. Rawls’ definition, which is complemented by a range of topical political theorists and philosophers, is said to remain highly influential despite of all criticism. After translating three different justifications of civil disobedience – “necessity”, “moral communication”, and “personal integrity” – to the case of deportations, the core argumentation addresses three main questions: how these justifications conflict; the role of the “epistemic position”; and eventually an attempt to outline a potential duty to resist deportations.

This main part, for example, aptly depicts the everyday resistance of would-be-deportees with James Scott’s “weapons of the weak” (1985). Still, the presentation seems to pause sometimes, first, with broadly showing (agents’) dilemmas of the motivations to resist and potential needs to publicly communicate, providing aspects and indications without fully permeating them. I will detail shortly. Not least, this is due to the brevity of the text format. The epistemic question, secondly, addresses the assumption that certain actors and positions evaluate a “clear and substantial injustice” superiorly. While some are said to argue that the local positions of urban

communities should receive more importance over the national authority in the evaluation and execution of deportations as they can better judge the individual position of a deportee, Birnie eventually cuts the discussion, referring to deportations as “a particularly murky policy field in which the full effects of the law and its implementation are not well understood by the general public”. So, even if the Swedish student Elin Ersson, who serves as a guiding example, does not know about the individual circumstances of the deportee’s case, it would be necessary to publicize the potentially questionable and violent state practice. This point is well taken, but it seems to supersede the epistemic objection when relativizing its own specific empirical knowledge; unless, we consider the acknowledgement of the complicated politics of deportations as particular. Thirdly, Birnie aims to provide “more fine-grained distinctions” for the moral evaluation of anti-deportation action, particularly as regards the conditions for a duty to disobey an unjust deportation. The condition that a deportation can, according to Rawls, be considered unjust is prerequisite for this point. The argumentation, which is again illuminating, suggests at least three types of actors: those who are “instrumental” for the successful execution of a deportation; those who have specific “responsibilities” towards the would-be deportee; and those who have “associative” duties towards their fellow residents. The difficulties and necessity to sufficiently undergird with empirical detail an agent-sensitive normative framework on anti-deportation resistance appear yet clearer. The sketch of the transnational dimension and the supposed receiving end of the deportee remain particularly vague. Thus, the state of destination of a deportee is not only constituted by its government as presented in the text, but likewise a (transnational) civil society – even if relative to a political system – and the broader population. In fact, the latter is playing an increasingly active role in resisting deportations. For example, individuals of the Malian diaspora in Europe started Facebook campaigns and finally mass protests at Bamako airport hindered an airplane with two deportees on board to land in early 2017 (Bendix, 2018). Obviously, this (transnational) actor diversity adds to the complexity of anti-deportation action. However, their role should be mentioned to complement the picture and framework outlined, the more as civil society and individual actors are central in the text. Not least, one would otherwise repeat that still too little is known about the societies where deportees are deported to (cf. Lecadet, 2013). In sum, more empirical lining of the complex entanglement of actors, legal issues and moral dilemmas involved, would help to better grasp the rapid sequence of points to understand how a true agent-sensitivity might concretely translate in its practical implementation. Only with the necessary empirical baseline knowledge the proposed program can actually be realized. If not, it risks losing its

potential, remaining a theoretical reflection, detached from its empirical subject-matter.

In itself, these steps towards an actor-sensitive, normative framework for anti-deportation resistance, including the advice to the political level to enable more legal ways for such action, are a laudable endeavor to bring clarity to a mined field. Normative orientation is highly needed as the paradigm of deportation is becoming ever more self-evident and contested at the same time. In doing so, the author himself obviously cannot stand away from partial judgments such as eventually valuing the threat for the individual deportee higher than a call for a potential structural change, or by characterizing deportations as a “particularly murky policy field”, which could also be taken as a thought-terminating cliché. Eventually, this underlines the evidence to the moral load of the phenomenon as well as the ever more value of its reflection and clarification.

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