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► **To cite this version:**

| Clara Lecadet. Deportation, nation state, capital. *Radical Philosophy*, 2018, 203, pp.28-32. <hal-03940167>

HAL Id: hal-03940167

<https://hal.science/hal-03940167v1>

Submitted on 15 Jan 2023

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Between legitimisation and violence

Clara Lecadet

As Abdelmalek Sayad has written: ‘To think about immigration (or emigration) is to think about the state.’¹ Attempting to question both the political structure of the state and its resonances for the individual, he adds that the risk of expulsion is what weighs on the mind of every immigrant and leads to a life of uncertainty and insecurity. It does not take an extreme political context, but simple, legislative changes and political decisions to tip foreigners into, or maintain them in, an illegal status which could lead to expulsion.

The political context in which Sayad made this comment was certainly marked by the 1974 suspension of legal access routes to migration for work in France and by the closing of other European countries to foreigners from former colonies. As public policies for the return of immigrants were put in place in the 1970s, they aroused the opposition of the Spanish, Portuguese and Algerian governments to the expulsion of their citizens.² From the 1990s, the return of immigrants, traditionally organised at a national level, became the cornerstone of European policy. The reinforcement of control measures at the external borders of Europe and of the expulsion of ‘illegal’ immigrants was concomitant with the creation of an area of free movement within the European Union. If this paradigm of return seems central to the current migration regime that has been imposed by a network of agencies including individual countries, intergovernmental organisations and certain NGOs, it is important to trace its origin, and to measure how deep-rooted it is in relation to the construction of political power in nation states.

The work of Mae Ngai and Daniel Kanstroom in the United States, and of Gérard Noiriel in Europe, together with the critical genealogy of deportation established by William Walters, have shown the central

role played by the expulsion of foreigners and its progressive institutionalisation in the building of nation states. Its divisive function has certainly contributed to their internal and external construction. Initially barely regulated, expulsion measures have come to precede, accompany and contribute to the establishing of definitions, categories and statuses produced by the state apparatus. Expulsion becomes part of the internal structure of the state by becoming the final arbiter in separating citizens from non-citizens. It makes concrete those legal distinctions which would otherwise remain simple legal fictions.

The bureaucratic nightmare involved in obtaining papers and their associated rights finds its radical expression in expulsion. This in-between situation which leaves so many foreigners in a ‘legal limbo’,³ but which also leaves room for individual and often discretionary measures for legalisation, allows the state to express and reaffirm its absolute power over the status – illegal or otherwise – of foreigners in its territory. Expulsion also shapes the outside appearance of the nation state in various respects. It creates a sort of blind spot to the extent that expelled migrants are consigned to invisibility, both actual and symbolic. The fact that foreigners are a central consideration in thinking about the state contrasts all the more sharply with the fact that once they are expelled, they are never again mentioned in public debate. They disappear after expulsion, and are often deprived of any means of legally appealing and annulling the decision that has been made. ‘Expelled migrant’ is not a recognised legal term. This is the point of the ‘Declaration on the rights of expelled and deported persons’ by Daniel Kanstroom and Jessica Chicco of Boston College Law School, a project which seeks to articulate full rights for expellees.

While expulsion may appear inconsequential and apolitical from a state-centred point of view, one only needs to cross borders and to strip oneself of the methodological nationalism which conditions a great part of our research and our viewpoints, to realise that expulsion means that expelled migrants are condemned to violence, destitution, rootlessness, and even death. At the same time, this realisation may also be an opportunity for social and political reorganisation. We must therefore deal with the policies and practices of expelling countries together with the social and political effects of expulsion in the countries where migrants are deported. In this way, we can achieve a more accurate mapping of the power relationships which allow such measures to be put in place, as well as an increased concern for the fate of people thus caught up in the implacable logic of the state.

While expulsion is a form of social destitution and radical political exclusion, it nonetheless generates mobilisation and new forms of collective subjectivity on the part of expelled migrants, who organise themselves on the basis of this denial of their political existence. The Association Malienne des Expulsés [Malian Association of Expelled Migrants] created in Bamako in 1996, the Association Togolaise des Expulsés [Togolese Association of Expelled Migrants] created in Sokodé in 2008, the association Welcome Back Cameroon⁴ founded in Yaoundé in 2006, and the Network of Ex-Asylum Seekers in Sierra Leone, which began in Freetown in 2011, are all initiatives which prove that expellees can use their ordeal as a source of collective action to claim public visibility and recognition. Their drive to self-organisation leads these people, considered second-class citizens, to become political subjects. Central to this is their claim that their participation in public debate takes its legitimacy, above all, from what they have experienced, and that they are therefore, more than anyone else, entitled to speak about it. The presence of the Malian Association of Expelled Migrants in public debate in Mali for more than 20 years, and the slogans of the Network of Ex-Asylum Seekers in Sierra Leone, such as 'Make us feel we belong' or 'Don't stigmatise us', show the involvement of these movements in the fight against the hardening of expulsion measures and citizenship claims in their countries of origin.

But the visibility created by expulsion is also significant if we look at it from the point of view of the relations between nation states, where countries of origin or of transit to which expelled migrants are returned are politically subordinate. Expulsion reveals relations on a global level, which are based on political power. It is part of the renewal of forms of political hegemony resulting from the colonial period, as is demonstrated by the pressure brought to bear on African countries by the European Union and the International Organisation for Migration (IOM) on the issue of the externalisation of European borders, and also in relation to the adoption of legal instruments in migration policy that conform to, and are usually dictated by, European interests.

Expulsion is not only an instrument distinguishing the status of a citizen from that of a foreigner and a factor in the political subordination of countries. To understand expulsion as part of the structure of nation states, we must include a reflection on the economic dimension of its use. The implications of expulsion for the organisation of work and the conflicts which it involves would complement an analysis of expulsion in terms of political rights and power struggles. Long before migration policies became a clear and visible part of the construction of individual countries, expulsion was an *ad hoc* way of treating foreign workers, for reasons rooted in both economic utilitarianism and nationalism, of which migrant workers have always been the main target. Thus, Gérard Noiriel considers that the French law of 1893 on the 'protection nationale du travail' [protection of national workers] was a milestone in the history of legislation and policy on residence permits.⁵ It is also pertinent to consider questions of political rights and their underlying economic dynamic. From the nineteenth century on, expulsion has been a powerful means not only of excluding foreign workers, but also of creating divisions within the workforce. In her analysis of the struggles of the Popular Front in France in the 1930s, the philosopher Simone Weil demonstrates that the participation of foreign workers in the struggles which brought about major social reforms was not only not recognised, but the existence of these workers was marginalised within the movement, leaving them in a precarious position and

liable to expulsion, as well as lacking any political rights. She denounces the denial of colonialism by the left-wing government of that period, and sees foreign workers as internal colonial subjects.⁶

Such mechanisms for the subordination of a foreign workforce, possibly leading to expulsion, became even more marked and visible with the circulation of workers connected to globalisation, and because of policies of selection and rejection based on usefulness to the economy of the host country. Emmanuel Terray has coined the term 'délocalisation sur place' [on-site relocation] to refer to the use of a low-paid, foreign workforce, whose cheap labour is in competition with 'national' labour and is easily expelled.⁷ But it is not enough to say that workers can be expelled when they are not, or are no longer, useful to the economy of the host country; they are expellable and expelled even when they are 'useful', in order to maintain a constant pressure on the labour market and wages and to put a stop to any possibility of organisation or claims for workers' rights. The same thinking is also at work in a brutal way in the global South and enables us to understand the long-standing process of the expulsion of foreign workers between different African countries.⁸ While the externalisation of European borders and its resulting imperialism undoubtedly play a leading role in the current reconfiguration of borders and migration policies in Africa, it is nonetheless the case that expulsion retains a 'local' dimension as a tool to increase the turnover of manpower which can be exploited at will. Equatorial Guinea and other oil-producing countries brutally and regularly expel migrant workers. If we look at the brutality of these measures for expelling foreign workers at different levels, and try to understand how they work together, we can then comprehend the importance of expulsion in the global functioning of neo-liberal capitalism.

Since expulsion is presented as a guarantee of national order and a pragmatic means of subduing the workforce, we must therefore think beyond the national framework, both in terms of the economic organisation of labour and the political means for the control, detention and expulsion of foreigners, in order to appreciate the current reconfigurations of expulsion measures. There is, in fact, a whole web of interrelated actions in various disguised forms, as can

be seen in the 'transfer' of asylum seekers in Europe under the Dublin III Regulation, and the 'evacuation' or 'humanitarian repatriation' carried out by the IOM from Libya or Niger, which sends migrants back to their country of origin as part of the political trend towards fixing populations and preventing them from migrating and/or enabling their return. The enumeration of these various levels, labels and kinds of legitimisation poses the question of whether the global discourse on 'governing migration' and on the need to return migrants simply redeploys what nation states have historically set up in relation to inclusion and territoriality at a wider scale.

Movements trying to challenge these policies are also established at various scales – local, national and transnational – but their mode of operation remains by and large fragmented. In their radical form, they aim to challenge the systemic framework of inclusion and exclusion established in the political structure of the nation state, as is the case with the No Borders Network which defends the principle of freedom of circulation and demands the abolition of borders, or with the current rallying cry 'Abolish ICE' [Immigration and Customs Enforcement] in the United States. This is also the case with the English network End Deportations, which asks for the abolition of the detention and deportation of migrants, or the French *sans-papiers* movement in the 1990s and for certain groups of undocumented migrants all over Europe which defend the principle of global legalisation and freedom of circulation. At the same time, we should not minimise the impact of the increasingly individualised forms of power predicted by Foucault on movements that are often organised around specific issues: protecting schools, preventing expulsion to countries where deportees' lives are at risk, and so on. The resources of the law are used to demand protection for individuals belonging to specific categories or coming from countries at war and thereby considered unsafe according to international conventions, thereby fueling a policy of 'case by case' treatment.

As such, the struggle against the principle of expulsion itself is generally not at the heart of these movements. Instead, at their centre there are a number of motives which may seem similar, but are based on very different relations to the state: the claim for

freedom of circulation, based on a radical critique of the state, is at quite some distance in its assumptions from demands for reception centres or pleas for hospitality, which make the state and its citizens legitimate actors in their duty of openness towards foreigners, but which do not radically question these structural roles. Despite criticism and opposition, strategies of resistance and occasional public outrage caused by certain deportations, the virtual consensus on expulsion across the political board seems, at least in liberal democracies, to rely upon the degree of acceptability of this measure. There is a strong tendency in the moral economy of the United States and Europe to link expulsion with an offence having been committed. Such legitimising positions make it difficult to develop a radical political critique of expulsion.

The intensely normalising process of these measures aims to neutralise criticism and make it inoperable. Governments, helped by international institutions like IOM or UNHCR, work to make expulsion publicly acceptable by incorporating it into a whole framework of 'migration governance'. In the twentieth century, there was a major shift from expulsions that played a key role in statelessness, violence and mass crimes in the interwar period and during the Second World War, and the expulsion of undocumented foreigners as part of current migration policies. This does not mean that from the nineteenth century on there were no expulsions of foreign workers, as there certainly were in France. But the change brought about by the Second World War and its role in raising a European consciousness and in building a unified, peaceful European area, seems to have implicitly moulded the discourse and views on 'return' policies developed from the 1970s in various European countries. Care has been taken to dispel any idea of continuity between the treatment of non-European foreigners and the violence of the first half of the twentieth century. A number of texts and legal instruments adopted after 1945 aimed to limit expulsions and to bring about forms of protection for those who had been displaced by the wars and/or stripped of their national rights. But as Arendt indignantly noted in relation to measures taken by the United States to strip communists of their nationality, countries considered to be democratic have adopted practices

which had been considered the reserve of totalitarian states.⁹ In the case cited by Arendt, expulsion could be aimed at citizens born in the country as a result of their loss of nationality. But it would apply above all to foreigners, in the light of their precarious administrative situation, and would be the central issue in the growing process of legitimisation and normalisation.

How could such measures be developed whilst also remaining acceptable? They had to be inserted into a political framework that made belonging to one's country of origin – even if this 'belonging' was purely formal or went totally against generations of residence in a different country – the ultimate justification of all the measures taken in regard to foreigners. This had to be based on a political and legal rhetoric which minimised its coercive dimension. Thus the Return Directive adopted by the European Parliament in 2008 contained such references as: respect for the rights and the dignity of expelled persons, recourse to a 'reasonable' use of force against resistance, development aid to third countries to promote the lasting resettlement of returnees, etc.¹⁰

The historical weight and the symbolic burden of expulsion remain, however. The very use of the term 'return' is symptomatic of what Sayad would call an 'alibi term'. As a political artefact, it is a euphemism for the violence inherent in expulsion, it erases the complexity of migration journeys in which expulsion is rarely synonymous with return, and it 'naturalises' return as an inherent part of migration. This effort at normalisation by both international institutions such as IOM and national governments combines discourse and practice: the rationalisation of coercion in manuals handed out to escorts, the creation of economic and policing partnerships with countries of origin, etc. There exists in expulsion a constant tension between norms and violence. And it is not by chance that activists in France insist on using the term 'deportation', which is immediately associated in French with the deportation of the Jews, a tactic which raises problems but which refuses normalisation. It is particularly difficult to fight a policy which is both unilateral and fragmented in its implementation.

What distinguishes individual expulsion on commercial flights and the expulsion of groups on specific

flights set up by liberal democracies from mass expulsion campaigns in an authoritarian context? Do these demarcation lines have any meaning? What are the criteria: the brutality of the methods, the number of people sent back, the respect for the rules of law or their suspension?

Numerous examples show the extent to which the lines are blurred: did not the European Council consider, in September 2015, collective expulsion programmes as a means of dealing with what was considered to be an influx of refugees unprecedented since the Second World War? Is not the attempt to circumvent the rules of readmission by printing a European pass a sort of legal coup? Does not the use of force in a democratic context create victims in exactly the same way as in an authoritarian one? Long-winded procedures and the careful use of words try to cover up the reality of practices, but they cannot eradicate the violence, the destitution to which expelled migrants are condemned or the issue of their treatment in their country of origin.

When Saudi Arabia carries out expulsion campaigns again and again (with up to a million foreigners expelled in a year), there might be reports on the intensity of the xenophobic violence involved in these campaigns or on the appalling number of those targeted by such measures,¹¹ but they never generate the degree of scandal that is aroused for political conflicts such as war, civil war or political repression. Thus, even when expulsion is carried out on a grand scale and without the resources and deferments that are possible in a state subject to the rule of law, the principle of sovereignty is so powerful that there is no international reaction other than in the form of humanitarian aid financed by governments via IOM, which further contributes to the depoliticisation of the issues raised by expulsion campaigns. There is an international political consensus on expulsion to the extent that, given the hypocrisy and political structures involved, the proportions and the methods of expulsion become almost irrelevant.

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Notes

1. Abdelmalek Sayad, *L'immigration et les paradoxes de l'altérité* 1. *L'illusion du provisoire* (Paris, Raisons d'agir, 1991[2006]), 161; translation author's own.
2. Patrick Weil, *La France et ses étrangers. L'aventure d'une politique de l'immigration de 1938 à nos jours* (Paris: Gallimard, 2005).
3. See Emmanuela Paoletti, 'Deportation, Non-deportability and Ideas of Membership', Working Paper Series 65, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, 2010, <https://www.rsc.ox.ac.uk/files/files-1/wp65-deportation-non-deportability-ideas-membership-2010.pdf>
4. Oscar Francis Eyezo'o, its founder and president, is also a Unionist and as such is very aware of the economic issues underlying the deportation process and of the necessity to defend migrant workers' rights. He is the author of the book *Et je fus expulsé [And I Was Expelled]* (CreateSpace Independent Publishing Platform, 2018).
5. Gérard Noiriel, *Une histoire populaire de la France* (Paris: Agone, 2018).
6. Simone Weil, *Contre le colonialisme* (Paris: Editions Payot & Rivages, 2018).
7. Emmanuel Terray, 'Le travail des étrangers en situation irrégulière ou la délocalisation sur place', in *Sans-papiers: l'archaïsme fatal*, eds. Etienne Balibar, Monique Chemillier-Gendreau, Jacqueline Costa-Lascoux and Emmanuel Terray (Paris: La Découverte, 1999), 9–34.
8. Sylvie Bredeloup, 'Tableau synoptique: *Expulsions des ressortissants ouest-africains au sein du continent africain* (1954–1995)', *Mondes en développement* 23:91 (1995), 117–121.
9. Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian Books, 1986).
10. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115>
11. Human Rights Watch, *Saudi Arabia: Mass Expulsions of Migrant Workers. Abuses During Detention, Deportation*, 2015, <https://www.hrw.org/news/2015/05/09/saudi-arabia-mass-expulsions-migrant-workers>