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A Commitment to Democracy Does Not Entail an Open Borders Immigration Policy *

Dan Ernst (Ewha Womans University)

Arash Abizadeh recently made an argument for the provocative conclusion that states with a commitment to democracy must allow non-citizens a say in determining the immigration policies they enact(37-65). People seeking to enter a state's jurisdiction to become permanent members must be granted political power to determine the policy concerning whether they will be granted admission and membership. He summarizes the two-step proof as follows:

First, a democratic theory of popular sovereignty requires that the coercive exercise of political power be democratically justified to all those over whom it is exercised, that is, justification is owed to all those subject to state coercion. Second the regime of border control of a bounded political community subjects both members and nonmembers to the state's coercive exercise of power. Therefore, the justification for a particular regime of border control is owed not just to those whom the boundary marks as members, but to nonmembers as well (Abizadeh 45).

Other contemporary political theorists have noticed this implication of a commitment to democracy, and have characterized the counter-intuitive result as an irresolvable paradox. Any attempt to enlist a democratic process to answer the question of who is going to be part of a democratic process leads to a fruitless infinite regress, says Jürgen Habermas:

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There is a conceptual gap in the legal construction of the constitutional state... One cannot explain in purely normative terms how the universe of those who come together to regulate their common life by means of positive law should be composed. From a normative point of view, the social boundaries of an association of free and equal consociates under law are perfectly contingent (115-16 Cf. Benhabib 44).

Joseph Raz and Avishai Margalit concur:

On a simple majoritarian view, the issue of self-government seems to defy a democratic decision procedure. The question is ‘what is the relevant democratic unit?’ and that question cannot be democratically decided (455).

According to Habermas, Raz and Margalit this is a logically irresolvable problem for political theorists who try to build their theories exclusively on democratic principles. One can’t take a vote to determine who gets to vote without first having a vote about who gets to vote in the vote determining who gets to vote about who gets to vote. And so on.

Therefore, say Raz and Margalit, we must look to a normative standard other than ‘democracy’ to guide decisions about political membership. They propose that the question of political membership be answered using the criterion of membership in an “encompassing group.”¹ Michael Walzer, Will Kymlicka, and David Miller support similar criteria (though they write of “communities of character,” “ethno-cultural,” and “national” groups, respectively.)

Abizadeh, in the paper cited above, suggests that this group of influential political theorists is too quick to abandon the use of democratic theory to

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1. They define “encompassing group” as follows (443-44): “The group has a common character and a common culture that encompass many, varied and important aspects of life, a culture that defines or marks a variety of forms or styles of life, types of activities, occupations, pursuits, and relationships. With national groups we expect to find national cuisines, distinctive architectural styles, a common language, distinctive literary and artistic traditions, national music, customs, dress, ceremonies and holidays, etc. None of these is necessary... They possess cultural traditions that penetrate beyond a single or a few areas of human life, and display themselves in a whole range of areas, including many which are of great importance for the well-being of individuals.”

provide guidelines for immigration policies. There might very well be practical difficulties in giving those who want to immigrate a share of the democratic power used to determine immigration policies, but it is not a logical impossibility. Abizadeh insists that an examination of the foundational values of democracy can help provide normative guidelines for evaluating immigration policy. Taking for granted the existence of a Westphalian Multi-State system, the influential theorists mentioned above have overlooked the possibility that immigration policy could be determined by cosmopolitan political institutions. In fact, says Abizadeh, a commitment to democracy requires that such cosmopolitan political institutions determine immigration policies.

I believe Abizadeh is mistaken to suppose that a commitment to democracy implies that legitimate immigration policy must be made via cosmopolitan institutions which grant political power to all those subject to the state's coercive immigration policies. It seems that Abizadeh is led to this mistaken conclusion because he misconceives the foundational commitment of democracy, and incorrectly equates "being owed democratic justification" with "being owed rights to democratic participation."

The long history of Western political/ethical theory (tracing a path through the writings of Hobbes, Locke, Kant, Mill to those of Rawls, Walzer and contemporary theorists) makes an essential theoretical distinction between "Liberalism" and "Democracy." "Liberalism" is a political/ethical theory that blossoms out of a foundational commitment to the value of 'autonomy.' According to Liberals, political structures are legitimate when they are built to protect individuals' autonomy. Coercion and force are attacks on autonomy, and thus State actions (which use coercion or force) must be justified by showing that such actions (though compromising individuals' autonomy in the short run) are necessary to protect autonomy in the larger context. "Liberal" justification for a policy entails explaining why the use of State force in this instance is necessary to protect autonomy. The moral appeal of "Democracy," on the other hand, is founded in the value given to the equality of persons (not their autonomy). In fact, Western political writings (perhaps since Plato) are filled with insistent demonstrations of the trampling of individual autonomy by democratic mobs. Democracy and Liberalism must be kept separate as concepts if we are to make sense of the Western political tradition. "Democratic" justification for a policy entails explaining why a policy does

not contradict the proposition that all persons are of equal moral worth. Understanding this allows us to differentiate between “democratically unjustifiable” and “democratically justifiable” immigration policies.

Democratically unjustifiable immigration policies include laws like the U.S.’s *Chinese Exclusion Act* (1882), which single out a particular ethnic group for exclusion, and justify such exclusion by racist propositions contradicting the principle of moral equality.² Democratically justifiable policies include contemporary immigration priorities given to family members of U.S. citizens, which are justified by the special interest would-be immigrants have in family re-unification, and do not rely on justifications which contradict the proposition that all persons are of equal moral worth.

Abizadeh’s simple two-step proof that an open-borders policy is required of any state committed to democracy begins with the proposition (cited at the beginning of this paper) “a democratic theory of popular sovereignty requires that the coercive exercise of political power be democratically justified to all those over whom it is exercised, that is, justification is owed to all those subject to state coercion.”(45). In focusing on the matter of justifying state coercion, Abizadeh cites Michael Blake’s work (Blake 257-96). The problem with following Blake in this context is that Blake is a theorist of “Liberalism,” his concern is justifying state uses of coercion and force. Justifying coercion is of concern to Liberals because their focus is preserving the value of individual autonomy. “Democracy” is not so much concerned with justifying coercion. The reason why Blake’s model works so well for capturing the implications of *Liberalism* is because Liberals are concerned with preserving the liberty of human beings, and coercion is a contradiction of that liberty. Democracy, on the other hand, already accepts that individuals will be subject to coercion —the coercion of the majority.

2. In suggesting this example for the purpose of clarification, I mean to help the reader imagine an immigration law justified by reasons which contradict the proposition that all persons are of equal moral worth. There is of course debate whether the actual law’s passage was due to anti-Chinese racism or whether political, economic, or religious reasons (which did not rely on racist propositions) played the decisive role in the law’s enactment. Cf. California Legislature, *The Chinese Question: Report of the Special Committee on Assembly Bill No. 12*. Sacramento: D. W. Gelwicks, State Printer, 1870. Also Cf. Denslow, Van Buren, “The Chinese Question.” New York: A.S. Barnes, 1881.

What democracy is concerned with is that political power is distributed equally. Why is equality the concern of Democrats? It is not because of a complicated conceptual argument linking equality and autonomy, nor an empirical conclusion that democracy protects individual liberty. No, the most immediate reason why democracy is appealing to its advocates is simply because it manifests the notion that the participants are equal.

Ask a group of students to make a decision about where to eat lunch; their preference for a democratic procedure is not an attempt to preserve their autonomy or liberty. Each student knows that he will not be eating what he alone has decided to eat, and each knows that the decision of the majority will bind him. So the democratic procedure will leave them neither autonomous nor at liberty. Nevertheless, if you try to propose a different procedure—perhaps where one student, or one group of students, makes the decision—there will likely be serious objections. What is objectionable in such a suggestion? It is the implication that the students are not equal.

Abizadeh suggests that democracy derives its moral attraction from the imperative to treat people as “free and equal.” He is half right and half wrong. Democracy manifests the conviction that people are equal. That is the heart of the matter. The matters of human autonomy and liberty (i.e. the values underlying Liberalism) are tangential to democracy. Democracy is an agreement to share political power equally. This agreement famously does not ensure the liberty of individuals—the majority may decide to incarcerate unpopular minorities; nor is it (except by a flight of ideological imagination) a manifest autonomy—a person doesn’t “give himself the law” (isn’t *auto-nomos*) in a democracy, the majority makes the law.

In defense of the position that autonomy is the grounding value of democracy, one might object: “In a democracy a person agrees to abide by what the majority decides, thus he acts according to the general law that he gives himself: abide by the will of the majority, whatever they decide.” But if following this general law is supposed to entail his autonomy, then one could similarly argue that since in a monarchy, the loyal subject agrees to abide by whatever the King decides, he too is autonomous. What sets democracy apart from monarchy is the equal sharing of political power.

If this is correct, that the foundational moral value underlying the appeal of democratic procedures is equality (and not autonomy, as Abizadeh assumes), then Abizadeh’s first proposition in his argument that open borders is required by a commitment to democracy is incorrect. The

democratic commitment is *not*: “those subject to coercion are owed justification for this limitation on their autonomy.” The foundational moral value underlying democracy is the proposition that “all persons are of equal moral worth, and thus should have an equal say concerning what we decide to do together.”

Clearly, this radically effects the argument Abizadeh uses to conclude that foreigner’s seeking immigration permits must be given political power to determine the laws that regulate their admission. I think this is enough to show that Abizadeh’s argument fails for incoherence. However, before we abandon his argument, let’s look at his second proposition: “the justification for a particular regime of border control is owed not just to those whom the boundary marks as members, but to nonmembers as well”(Abizadeh 45). Even if Abizadeh is correct about this second proposition, if he is wrong about the foundational value of democracy, then we should expect his analysis of what it means to justify a policy in a manner consistent with a commitment to democracy to be wrong.

In fact, this is what we see. Abizadeh’s analysis of “democratic justification” is incoherent because he takes democracy to be founded on a commitment to autonomy. In Abizadeh’s formulation, those subject to coercion are owed justification for this coercion’s limitation on their autonomy. Each individual must be given reasons for why his autonomy is being limited. “Democratic” justification for the limitation on his autonomy, according to Abizadeh, is given by the pseudo-contractual argument, “you were part of the democratic procedure, and you agreed to abide by the outcome of the procedure. Thus, whether or not your preference was chosen, your autonomy is not compromised since you agreed to be bound by the outcome of a democratic political procedure.” Yet, as explained above, this same type of pseudo-contract could be formulated in the relationship between a subject and his Despot. Democracy is distinguished morally from despotism, and if it is not through this type of pseudo-contract which metaphorically preserves autonomy, then it must be some other value. I think that value is “equality.”

If the founding value of democracy is equality rather than autonomy, then it is violations of *equality* that must be given “democratic justification.” If the appeal of the democratic procedure is not related to autonomy, but to its being a manifestation of each individual’s equality, then “democratic justification” has to do with whether the decision procedure (or law)

manifests the equality of persons. Thus, the first principle of democratic justification would be: “those who are excluded from participation are owed justification for this affront to their equality.”

Perhaps an example will clarify. Let’s say that a class of students has been promised a cake of their choice on Friday as reward for having worked hard on a project over the last week. One of the students has been absent the whole week, but then shows up on Friday. The students refuse to include him in the decision concerning which kind of cake to get. Democratic justification is owed him. We can imagine explanations for his exclusion that are unacceptable to anyone who holds a commitment to democracy. Reasons such as: “because you’re Muslim, or Jewish, or ugly” These all contradict what we have identified as the foundational value of democracy: equality of persons.

However, we can also imagine a justification that *is compatible* with a commitment to democracy: “you were not a part of the project, so it is reasonable that you will not have a say in what we do vis-à-vis this last decision concerning our project.” This implies no disrespect of the student’s equality as a person, and so is an acceptable “democratic justification” for being excluded from the democratic procedure in question.

This analysis suggests both that, there are “democratically” acceptable reasons for excluding some portion of humanity from a say in determining a state’s immigration policies, and that there are reasons which are “democratically” unacceptable (i.e. that contradict the foundational value of democracy: the moral equality of persons). We can agree with Abizadeh that immigration policy must be “democratically justified” to those being excluded from admission and membership, while at the same time understanding the phrase, “democratically justified,” differently. We now see that we should understand the phrase as signifying that the State’s policy does not contradict the commitment to the moral equality of persons. The standard for a law’s being “democratically justified” is that it treats all persons’ interests equally. So in any particular evaluation of immigration policy, we can ask, does the decision to exclude this person from admission rest on the claim that the person is in some way unequal in moral worth? Clearly, racist reasons for exclusion would fall afoul of the democratic commitment of the state. For example, we can think here of some of the reasons given for the U.S.’s *Chinese Exclusion Act* (1882) which forbade immigration permits from being issued to ethnic Chinese while

maintaining that immigration for people of all other ethnicities would remain unlimited.

But we can also ask a second question in order to evaluate a particular immigration policy as “democratically justified” or “unjustified.” Since what is at stake is the equality of persons, we can (in a kind of applied Kantianism) ask the universalizability question. That is, we can ask, “If we admit to citizenship all those in a particular category of people seeking admission, then would the purpose for which that group is seeking admission be undermined?” Take for example the following conversation: If you seek admission to improve your economic condition, and we admit all those who seek admission for this reason; this would mean that there would be no economic advantage to gain by immigrating for you and the 100 million in your category of admission seekers.

Finally, when immigration priorities granted to certain classes of would-be immigrants seem “morally suspect” at first inspection, we can investigate whether they are justified by appeal to special interests that this class of applicant have which other would-be immigrants would not have fulfilled in the event of their immigration. For example, a priority granted to those with family members in the U.S. might be interpreted as justified by ethnic preferences which contradict the principle of moral equality. However, such prioritization can be justified by the special interest these would-be immigrants have in family re-unification that other would-be immigrants do not share. Thus, such a policy need not rely on justifications which contradict the proposition that all persons are of equal moral worth.

By keeping in mind that the attraction of democracy lies in its manifestation of the proposition that each person is equal (not that people are autonomous generators of their own rational and moral judgments) we have derived evaluative guidelines for determining whether certain immigration policies contradict this moral proposition. We may concede that persons seeking admission to a state that believes in the equality of persons and wishes to manifest this commitment in its lawmaking will be given a justification for their being excluded that does not rely on their being taken as unequal, but yet does not give them political power to determine what those immigration policies will be.

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Abstract

Arash Abizadeh, in his recent contribution, “Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders,” made an argument for the provocative conclusion that states with a commitment to democracy must allow non-citizens a say in determining the immigration policies they enact. I show that Abizadeh’s argument fails; he does not prove that a commitment to democracy entails an open borders immigration policy.

Keywords: Democracy, Immigration, Autonomy, Equality

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