

Conceptual Coherence and A Right to Immigration

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Abstract

This essay attempts to examine whether there is a derivative right to immigration that follows from the acceptance of a right to emigration within political philosophy. The focus is on the relationship of these two aspects of a right to freedom of movement, as viewed from a liberal rights perspective. The right to emigration is largely taken to be a basic right while the right to immigration is not. By investigating conceptual coherence I argue that the right to emigrate necessitates a right to immigrate. Finally, I also attempt to characterise the scope of the resulting right to immigrate.

Introduction

This essay attempts to contribute to the discussion of a very important topic in liberal theory: the question of whether there is a right to migrate, or as I will call it a right to free movement.¹ In the current world order, states generally take it as their right to control immigration; anyone who wishes to migrate finds himself subject to state power.² The question, then, is whether it is legitimate

¹ I follow the term ‘freedom of movement’ as used by Cole, ‘Open borders: an ethical defense’ 159, that is, defined as free movement both in the territorial, as well as the citizenship sense.

² Abizadeh, ‘Citizenship, immigration and boundaries’ 359.

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for states to exercise this kind of power, or whether individuals have a right to free movement that trumps the state's right to control its borders. The issue of a right to immigration is particularly interesting when we consider that at least within liberal theory there seems to be a consensus upon a basic right to *emigration*. This fact is often noticed in contemporary literature on immigration, but not examined in more detail. This essay will assume the point of view of a liberal theory of rights, and from this perspective explore the relation of these two rights to immigration and to emigration. I will analyse how they, both being parts of a freedom of movement, are related, and what this could imply. Two important questions arise in this context: Firstly, the question of *ethical coherence*, i.e. the question of a morally relevant difference between emigration and immigration that justifies the different status of these components of a freedom to movement. The second question, which is the focus of this essay, is the question of *conceptual coherence*.³ Here the issue is how immigration and emigration are linked conceptually and what this might imply for their status as rights. My focus is on a right to immigration as a *derivative* right, based on the right to emigration. I will argue that even if ethical coherence turns out to be satisfied and immigration doesn't seem to be a basic liberty in its own right, a right to emigrate necessarily entails some kind of right to immigrate. Subsequently, I will explore how extensive such a right to immigration must be. My main conclusion is that if a universal right to emigrate is endorsed, it has to be matched by some kind of right to immigrate, although the latter might well be less comprehensive than the former. Before discussing the main points of this essay the background for the arguments will be briefly introduced, so as to accurately place the specific arguments and clarify basic assumptions.

³ These terms are taken from Wellman, 'Freedom of association and the right to exclude' 90, and Cole 'Open borders: an ethical defense' 173.

I. Liberalism, Basic Rights, and Autonomy

For the purpose of this essay I will adopt the standpoint of political liberalism.⁴ Furthermore, I am assuming an agreement on the scope of justice concerns, this being the consensus that the scope of rights, at least of basic human rights, should be global. This means I am presuming a liberal theory of universal rights, i.e. general agreement upon the fact that there are certain universal basic, or human, rights.⁵ Liberals often argue that these kinds of rights exist and that they consist of ‘basic liberties so fundamental to a free life that they can only be legitimately restricted for the sake of the basic liberties themselves’.⁶ States have the duty to respect the human rights of their citizens as well as those of other individuals.⁷

Given the above, the thesis that I will argue for is clearly *internal* to liberal theory. It will therefore not convince someone who advances communitarian or (purely) utilitarian arguments for closed borders. I will bracket these fundamental disagreements and assume a more limited standpoint. What I want to argue for is the position on a right to immigrate that follows in my opinion from subscribing to the importance of liberal universal rights. More precisely, this essay discusses what follows if we recognise one aspect of the freedom of movement, emigration, as an important right.

In order to analyse the conceptual relation between the right to immigrate and the right to emigrate it is important to consider *why* rights are valuable, since this can help to clarify the status of a right to freedom of movement. For the purpose of this article, I will assume that the basic value of rights and liberties is autonomy. This expresses the thought that what matters is that people are capable of an autonomous life, and that it is important that people have the

⁴ Meaning more precisely what is called ‘new liberalism’ or ‘social justice liberalism’, cf. Courtland et al. ‘Liberalism’.

⁵ For the purpose of this essay I use the terms human rights and basic rights interchangeably.

⁶ Abizadeh ‘Citizenship, Immigration and Boundaries’ 365.

⁷ Cf. Wellman ‘Freedom of Association and the Right to Exclude’ 16.

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capacity to make and implement their own life-plans.⁸ In the understanding of autonomy I will follow the definition by Raz:

An autonomous person is part author of his own life. [...] The autonomous person's life is marked not only by what it is but also by what it might have been and by the way it became what it is. A person is autonomous only if he has a variety of acceptable options available to him to choose from, and his life became as it is through his choice of some of these options.⁹

In concurrence with Raz there are two conditions of autonomy that are relevant for this essay. (A) a person has to be independent, meaning free from being subjected to the will of another person¹⁰ and (B) he has to have an adequate range of options.¹¹ Accordingly, if autonomy is at the base of basic rights, these rights should strive towards protecting people against the violation of these two conditions. We will see how this is important for the discussion of the freedom of movement in the course of the essay.

II. The Status and Value of a Right to Emigration

The core question of this essay presupposes that there is general agreement on a basic right to emigration, asking what consequences this has on a right to immigration. A first criticism could thus be levelled at this premise: it could deny that a right to free movement is a basic universal right.

The existence of basic universal rights does not imply that citizens cannot have special rights against their own state.¹² An important difference between immigration and emigration is that emigration can also be seen as a right that a person has as a citizen, in the relation to the state and his fellow citizens, not

⁸ Cf. Ingram 'A Political Theory of Rights'.

⁹ Raz *The Morality of Freedom* 204.

¹⁰ Raz *The Morality of Freedom* 372.

¹¹ Raz *The Morality of Freedom* 378.

¹² E.g. the protection of the properties of all residents is such a right. Cf. Blake 'Universal and Qualified Rights to Immigration' 2.

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only in the framework of universal rights.¹³ A right to immigration, on the other hand, implies a duty states have against people that are per definition not their citizens.¹⁴ Therefore, on the basis of a mere citizenship right, it is harder to argue for a right to immigrate that follows from a right to emigrate. This could be a reason for a right to emigrate being considered to be of great importance, whereas a right to immigrate is not. So the case may be that a right to emigration is an important right, albeit not a universal one, but a kind of right, which is due solely in the relationship of a state and its citizens.¹⁵ Dowty puts it as follows:

The right to leave does not imply the corresponding right to enter a particular country. [...] The two issues are not symmetrical: departure ends an individual's claim against a society, while entry sets such claims in motion.¹⁶

If this is the case, then we cannot establish an argument for a universal right to immigration that stems from its relation to a right to emigration. But if emigration, and thus perhaps immigration, is considered a basic universal right, this means the claims an individual holds are not only against his particular society but against anyone who might restrict his basic right in general. Even though it does not automatically follow from the existence of basic universal rights that a right to emigration is one of these, there are reasons for seeing it as such and there seems to be a tendency in this direction within liberal theory: For one thing, it is part of the Universal Declaration of Human Rights,¹⁷ and takes a very explicit and important stance there. It is often seen as 'an important liberty in itself' as well as a 'vital prerequisite for other freedoms'.¹⁸ A reason for this could be an emigration-right's significance for autonomy, which, as I assumed

¹³Cf. Blake 'Universal and Qualified Rights to Immigration' 5.

¹⁴If it is not the right to re-immigrate of expatriates which is considered as a basic right by the universal declaration and is not the issue here.

¹⁵Cf. Blake 'Universal and Qualified Rights to Immigration' 5.

¹⁶Dowty as cited in Dummett 'The Transnational Migration of People Seen From Within a Natural Law Tradition' 174.

¹⁷Universal Declaration of Human Rights, Article 13.

¹⁸Bader 'The Ethics of Immigration' 338.

above, is the underlying value of basic rights. This does not mean that I deny the importance of a right to exit as a citizenship right. But it fails to convey all the importance a right to emigration has, since such a right is important as a universal right as well. If we look at the underlying value, autonomy, of the right to emigration, we will see that it is important in two ways. One of the ways corresponds to its importance as a citizenship right, the other to its importance as a basic universal right.

As stated, two reasons why a right to emigration is seen as valuable enough to be a basic right can be determined. These reasons are analogous to the two conditions for autonomy presented in above: without a right to emigration, both conditions are violated. (A), the independence condition, is violated, since if a state prevents someone from exiting, he can be seen as subjected to someone else's will. (B), the adequate options condition, is violated as well, since it may be a very important element in his life-plan to leave his country. The violation of (A) corresponds to the importance a right of emigration has as a citizenship or consent based right. It is important because otherwise citizens are coerced without consenting to a state (they are clearly not consenting, since they want to leave). As Wellman puts it, a state would be treating its citizens 'as tantamount to political property.'¹⁹ (B), on the other hand, is important universally, simply because individuals may not be in the possession of an adequate range of options. The duty corresponding to this right is not necessarily only a duty of the individual's own state. The relevant options may simply be found elsewhere, and the individual therefore, if having the freedom to move is important at all, has to have the right to pursue an adequate range. While (A) is clearly violated under all circumstances, critics argue that (B) is not. In most legitimate states at least the range of options provided internally is held to be sufficient to satisfy the condition of autonomy.²⁰ Thus, only (A) would be violated. I do not agree

¹⁹Wellman 'Freedom of Association and the Right to Exclude' 90.

²⁰Miller as cited in Cole 'Open Borders: an Ethical Defense' 195. See also Perry as cited in Abizadeh 'Citizenship, Immigration and Boundaries' 367.

that most states provide enough options: this may be so in many cases, but it is for individuals to decide and cannot be generalised since there are important reasons every individual could have for wanting to leave any state, including liberal democracies. Additionally, these reasons could be of major importance to people's lives. Examples could be, for example wanting to live somewhere, where more people share your political view, the wish to join a partner or family, to live in a more egalitarian society, or a more liberal one, etc. It can, therefore, be argued that the right to emigration should have the status of a basic right.

III. Conceptual Coherence: Does a Right to Emigration Imply a Right to Immigration?

In our current world order emigration and immigration cannot be considered as separate parts of a freedom of movement. Since we do not have any non-nation state territory, emigrating somewhere necessarily means immigrating somewhere else; they are two facets of one movement. This makes the question of conceptual coherence relevant: it might be the case that the conception of a right to one of the two aspects necessarily entails a right to the other. Dummett claims for example:

Logically it is an absurdity to assert a right of emigration without a complementary right of immigration unless there exist in fact [...] a number of states which permit free entry. At present, no such state exists, and the right of emigration is not, and cannot be in these circumstances, a general human right exercisable in practice.²¹

A reply to this is that it is simply not the case that if somebody is refused entry to X this prevents him from exiting Y. The claim is that the right to exit does not depend on the right to enter elsewhere.²² Often analogies are given, for ex-

²¹Dummett 'The transnational migration of people seen from within a natural law tradition' 173.

²²Cf. Cole 'Open Borders: an Ethical Defense' 202

ample golf clubs or marriage: exiting such a club or divorcing is not dependent on being admitted to another club or having someone else who wants to marry you.²³ But these analogies lose their appropriateness when one considers the fact that there is no ‘space in between countries’. Citizenship is very different from marriage or golf clubs. The situation one finds oneself in when one for example divorces her partner is fundamentally different from being stateless. There is no parallel to a happy bachelor’s life, i.e. a feasible way, compatible with other human rights, to exit a state without entering one. In fact, statelessness is a very precarious situation.²⁴ It seems that unless you are willing to take great risks you cannot use your right to emigration except if there is somewhere you are allowed to enter.

This can be answered with the following objection: even if the above is right, emigration is a conditional right, since a right to enter collides with a nation’s freedom of association. Again marriage is an analogy: your conditional right to marry does not entail a claim that gives anyone of your choosing or anyone at all the duty to marry you.²⁵ The comparison basically says that a right to immigrate, similar to a right to marry, is a conditional right, conditional on the fact that you find someone who consents to marry you.²⁶ This might be the case with immigration if it turns out that the status a right to immigration has in its own right is not that of a basic right. This does not seem to imply that emigrating is also conditional in this form. But this would only hold if immigration and emigration were separate. However, they cannot be fully separated, as I argued above, since there is no space to go if you emigrate, that does not entail immigrating. This means if immigration is a fully conditional right and you depend on immigrating somewhere in order to exercise your right to emigration (otherwise you enter the precarious situation of statelessness), the

²³Cf. Wellman ‘Freedom of Association and the Right to Exclude’ 35.

²⁴Cf. De Guchteneire et al. ‘Migration Without Borders: an Investigation into the Free Movement of People’ 7.

²⁵Cf. Wellman ‘Freedom of Association and the Right to Exclude’ 31.

²⁶Cf. Seglow ‘The Ethics of Immigration’ 326.

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right to emigration itself seems to become conditional too. But, since a right to emigration is a basic right, it can hardly be conditional, for this would very much weaken its status as a basic right.²⁷ Therefore, in order to be a basic right, emigration necessitates some kind of right to immigrate that is not conditional. If a right to emigration is considered important, it is fundamentally necessary to have somewhere to go. And it is not sufficient if there 'exist in fact [...] a number of states which permit free entry,'²⁸ as Dummett indicates. If there is a basic right to emigration, it cannot be the case that it is conditional on the contingency of some states having open borders. Even if fulfilment is not immediately possible, it should at least be conceptually possible, and not unattainable. If it conflicted with other rights, here the freedom of collective association, for example, which always trumped it (indirectly through trumping the right to immigration), there would be, in effect, no basic right to emigration. Unconditional must not be misunderstood. Of course the duties that a right implies, even a basic right, will not be unlimited. For example, if someone has the right to live this does not impose unlimited duties to give him food on every other human being. But if we have a basic right to emigration that has to be respected for every individual independently of his membership, and if every country can refuse him entrance, this amounts to emigration being not a real right at all. If someone has a right that is only a pro forma right, meaning it does not in concept at least make possible what it is actually meant to ensure, this amounts to it being factually nonexistent. Something that is seen as a basic right should not simultaneously be not enactable.

Thus, a basic right to emigration implies the general duty to make sure that a migrant has the possibility to enter somewhere. The connection invoked here is, in terms of Nickel, that these two rights 'strongly support' each other. This

²⁷ Similarly, in the contemporary conception of human rights (of which emigration is one) these are not considered conditional. Cf. Nickle 'Human rights'.

²⁸ Dummett 'The transnational migration of people seen from within a natural law tradition' 173.

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is the case if it is logically or practically incoherent to endorse a certain right while rejecting another. This means that one is essential for the endorsement of the other, and they are therefore indivisible.²⁹ I argue that this relation is the case with respect to emigration and immigration.

Wellman objects that in this argument the existence of a right is confused with its value. He gives the following example: imagine that my son has the legal right to smoke a pipe. If I prohibit my son from smoking in my house, this may lessen the value of his right but it is ‘not inconsistent with the existence of his general right to smoke’.³⁰ But the analogy is not accurate. The situation of someone who wants to exit his country is not similar to someone who is prohibited to smoke in one particular house, but to someone who may have the general right to smoke but who is prohibited to smoke in every place he can possibly enter. The only way he can hope to smoke without facing persecution is if someone grants him the possibility out of goodwill. But then we can clearly not speak of a basic right but at most a conditional right to smoke.

IV. How Comprehensive Need a Derivative Right to Immigration Be?

If the existence of a basic right to emigration does imply a right to immigration as I have argued above, how extensive must the resulting right to immigration be? Since the argument was that without any place to go a right to emigration is void, it seems that as soon as you have the right to immigrate to one country this problem is solved. I argue that this is not the case. I hold that for the right to emigrate to be a real right, it has to be possible by using this right to, at least in tendency, work towards realizing the underlying value that makes this right important. In order to clarify this argument I will present the situation in a simplified version. Imagine person x has left his original home state P. He has the possibility to enter Q (and only Q). He therefore is able to exercise his

²⁹Cf. Wenar ‘Rights’.

³⁰Cf. Wellman ‘Freedom of Association and the Right to Exclude’ 89.

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right to emigrate. Now once he has entered Q, he clearly still has a basic right to exit (since basic rights to not expire after usage). Imagine country Q is very similar to his former home state P. Let us assume there is a particular direction the politics in P are taking that he cannot agree with. These circumstances that led him to leave P, are similar in Q. If he then wants to leave Q, imagine the only place he can go is his former home state P.³¹ His right to exit is not violated in the conceptual sense, since he can exit. But it seems that the content of his right to exit is somehow invalidated.

In order to make this more precise, we need to examine once more the underlying value that makes the right of emigration important to us. The first condition of autonomy (A) seems to be fulfilled as soon as you have the right to immigrate to one country apart from your own. In order to not be dominated by the will of others you have to be able to end your living under a particular state's coercion, i.e. emigrate, and this is possible as soon as you can exit. But the second aspect of value (B) may not be violated always but it will be at least sometimes if people have only the very limited right to immigrate described above. In order for both aspects to be truly fulfilled and the right to emigration to be truly effective, there has to be a right to enter an adequate range of countries. This is only the case if there is enough variety in the options.³² This is different from the conclusion that in order to enjoy a meaningful right to emigration, a right to immigration into every country in the world is necessary. The right to exit is meaningful as soon as an individual has an adequate amount of countries he has a right to immigrate to;³³ assuming that this right should be more than a mere pro forma right.

³¹This thought experiment also works by simply considering the original migration from P to Q, but the above makes the implications even clearer.

³²Cf. Raz *The Morality of Freedom* 375.

³³This amount may be very difficult to determine, but I do not hold this to be a powerful counterargument.

Conclusion

Randomised control trials are not a bad way of testing causal hypotheses. Certainly, nothing here should be taken as an argument that RCTs are, in principle, worse for this purpose than other scientific methods. However, when the concept of epistemic power for testing causal hypotheses is taken seriously, I cannot find a philosophically satisfying justification for the superior status of RCTs. A fully-fledged program for how, specifically, scientists should test causal hypotheses would require significantly more work than I have space for here. However, my argument suggests that evidence-based movements would be well served by getting rid of hierarchies, and conceding that there are several justifiable scientific methods for testing causal hypotheses. The question of which method is best may need to be answered on a case-by-case basis, rather than as a matter of philosophical principle.

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