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Arash Abizadeh

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# Democratic Theory and Border Coercion

## No Right to Unilaterally Control Your Own Borders

Arash Abizadeh

*McGill University, Montreal, Quebec, Canada*

The question of whether a closed border entry policy under the unilateral control of a democratic state is legitimate cannot be settled until we first know to whom the justification of a regime of control is owed. According to the state sovereignty view, the control of entry policy, including of movement, immigration, and naturalization, ought to be under the unilateral discretion of the state itself: justification for entry policy is owed solely to members. This position, however, is inconsistent with the democratic theory of popular sovereignty. Anyone accepting the democratic theory of political legitimation domestically is thereby committed to rejecting the unilateral domestic right to control state boundaries. Because the demos of democratic theory is in principle unbounded, the regime of boundary control must be democratically justified to foreigners as well as to citizens, in political institutions in which both foreigners and citizens can participate.

**Keywords:** *borders; immigration; democratic theory; coercion; citizenship*

Whether a democratic polity has the right to unilaterally control and close its borders to foreigners cannot be settled until we first know to whom the justification of a regime of border control is owed. According to

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the state sovereignty view—the dominant ideology of the contemporary interstate system—entry policy ought to be under the unilateral discretion of (the members of) the state itself, and whatever justification is required for a particular entry policy is simply owed to members: foreigners are owed no justification and so should have no control over a state's entry policy.<sup>1</sup> What I seek to demonstrate is that such a position is inconsistent with the democratic theory of popular sovereignty. Anyone who accepts a genuinely democratic theory of political legitimation domestically is thereby committed to rejecting the unilateral domestic right to control and close the state's boundaries, whether boundaries in the civic sense (which regulate membership) or in the territorial sense (which regulate movement).<sup>2</sup>

This thesis will be surprising to those familiar with the literature on the ethics of borders. While some, such as Joseph Carens, have attacked unilaterally closed borders on liberal grounds,<sup>3</sup> many have responded by appealing to democratic grounds to defend the unilateral right to control (and so to close) borders. That is, an emerging view in the literature is that there is a fundamental tension between liberalism and democratic theory when it comes to borders: while liberalism may require open borders, democracy requires a bounded polity whose members exercise self-determination, including control of their own boundaries. This philosophical landscape is reflected in the politico-legal practice of self-styled liberal democratic states as well. It is true that many states have recognized, to a limited extent, a liberal regime of human rights tempering their claim to sovereignty over boundaries: many grant foreigners legal rights (e.g., of asylum) and standing in judicial proceedings concerning entry.<sup>4</sup> But these human rights are ultimately viewed as constraints upon, and in tension with, the right of a democratic people unilaterally to control its own boundaries.

Against the almost universally accepted view, I argue that democratic theory either rejects the unilateral right to close borders, or would permit such a right only derivatively and only if it has already been successfully and democratically justified to foreigners. This is because the demos of democratic theory is in principle unbounded, and the regime of boundary control must consequently be democratically justified to foreigners as well as to citizens. The argument I make is thus internal to democratic theory; it does not derive from external constraints on popular sovereignty. It is also limited: I do not offer a defence of democratic theory; my argument only shows what follows *if* one is already a committed democrat.

Viewing borders through the lens of democratic theory, rather than liberalism, has a distinct advantage: by focussing on who should have standing in the political processes by which regimes of border control are legitimately

determined, democratic theory identifies the legitimate *political* (and not merely judicial) frameworks within which competing moral claims, which liberals and their critics make about border entry policies, ought to be adjudicated. Whereas the ideology of state sovereignty has portrayed state-centric citizenship as a *precondition* for political voice and subjectivity,<sup>5</sup> democratic theory to the contrary makes citizenship and its rights an *object* of political evaluation. The right to freedom of movement urged by the No One is Illegal, Solidarity Across Borders, or Sans-Papiers movements may or may not merit legal recognition; what I show is that the legal recognition or denial of such a right must be the result of democratic processes giving participatory standing to foreigners asserting such a right. Democratic theory properly understood provides the interstate framework of legitimacy within which foreigners' claims to free movement can be democratically adjudicated.

### **The Autonomy Principle: Liberal and Democratic Justification of Coercive Institutions**

It is clear that the state's exercise of political power is ultimately backed by coercion. It is also clear that coercion constitutes an infringement upon an individual's freedom. The question is how the exercise of political power could be reconciled with a vision of human beings at the normative core of both liberalism and democratic theory: a vision of human beings as inherently *free and equal*.<sup>6</sup>

I take it that in neither case is freedom, defined as the absence of external constraints, the ultimate value of concern. If some such freedoms (such as freedom of conscience) are more valuable than others (such as freedom from traffic signals), then it follows that the value of such freedoms depends on how they serve some other value(s).<sup>7</sup> For the purposes of this article, I assume that the core value of both liberalism and democratic theory is personal autonomy, and that freedom is valuable precisely insofar as it serves autonomy. I follow Joseph Raz here in understanding the ideal of personal autonomy to involve "the vision of people controlling, to some degree, their own destiny," such that they are able to set and pursue their own projects and see themselves as "part creators of their own moral world," and not simply "subjected to the will of another."<sup>8</sup> An autonomous life so understood is possible, Raz argues, only if three conditions are met: the person (1) has the appropriate *mental capacities* to formulate personal projects and pursue them, (2) enjoys an adequate range of valuable *options*, and (3) is *independent*, that is, free from subjection to the will of another

through coercion or manipulation. These are what Raz calls the three “conditions of autonomy.”<sup>9</sup>

Being subject to coercion can invade an agent’s autonomy in three ways, corresponding to the three conditions of autonomy. First, being subject to coercion sometimes simply destroys (or hinders the development of) the requisite mental capacities. Second, it inherently eliminates options otherwise available to the person. It is true that autonomy does not require the *maximization* of the number of options, but only an *adequate* range of *valuable* options—neither any option in particular nor a maximal quantity. Thus the coercive reduction of options undermines the second condition of autonomy only sometimes: only if the agent is left with an inadequate range of other valuable options. But the third condition of autonomy—independence—is *always* invaded by subjection to coercion, because it subjects one agent to the will of another. This is why it makes some difference to one’s autonomy if one’s options are eliminated by *intentionally* acting agents (rather than, say, by unpreventable natural disaster). It is also why being subject to coercion compromises the autonomy even of slaves whose masters grant them an otherwise adequate range of valuable options.<sup>10</sup>

The legal apparatus of the state subjects individuals to coercion in two ways: through coercive acts and coercive threats. A *coercive act* directly and preemptively deprives a person of some options that she would otherwise have had. The most obvious kind of coercive act is physical force, where the person’s body and physical environment are acted on by an agent. Legally authorized agents of the state might, for example, forcibly hold back a person from carrying out a murderous act, speaking in public, or entering its territory. A *coercive threat*, by contrast, simply communicates the intention to undertake an action in the future whose (anticipated) effect is to prevent a person from choosing an option that she otherwise might choose. So beyond directly thwarting the pursuit of some options, states also threaten persons with sanctions should they carry out proscribed actions.<sup>11</sup>

Because coercion always invades autonomy, I take it that both liberalism and democratic theory share the view that coercive state practices—that is, practices that subject persons to coercion—must either be eliminated, or receive a justification consistent with the ideal of autonomy. I follow Michael Blake and call this demand for justification the *autonomy principle*. As Blake notes, while any instance of coercive subjection directly encroaches upon an agent’s autonomy, since securing the three conditions of autonomy may itself require collective forms of life dependent on coercive state institutions, one way to justify these institutions would be to demonstrate that their coerciveness helps make a global (and more significant) contribution to the autonomy of precisely those persons subject to them.<sup>12</sup>

Liberalism and democratic theory pursue this general strategy of justification in distinct ways. Liberalism, as I construe it here, interprets the autonomy principle to require that the exercise of political power be in principle *justifiable* to everyone, including the persons over whom it is exercised, in a manner consistent with viewing each person as free (autonomous) and equal. The democratic theory of popular sovereignty, by contrast, holds that the exercise of political power is legitimate only insofar as it is actually *justified by and to* the very people over whom it is exercised, in a manner consistent with viewing them as free (autonomous) and equal.

The key difference, then, between liberalism and democratic theory is that while the former engages in a strategy of hypothetical justification to establish the *justness* of institutions and laws through which political power is exercised, the latter demands *actual participation* in institutionalized practices of discursive justification geared to establishing the *legitimacy* of political institutions and laws.<sup>13</sup> Hence, what counts as a valid justification is different in each context. Under the liberal strategy of justification, to say that a justification is “owed to all persons” is to say that any putative justification of the exercise of political power must take into account each person’s interests and status as a free and equal agent who is a source of value. It is not to make any claims about the actual *process* of justification—that is, about who must actually participate in such a process—but about its content, for example, about what counts as a reason in justification. By contrast, under the democratic strategy, saying that a justification is “owed to all those over whom power is exercised” is to say something about the process: that all such persons must have the opportunity (1) actually to participate in the political processes that determine how power is exercised, on terms that (2) are consistent with their freedom and equality. I take these two conditions—*participation* and *freedom/equality*—to correspond to a deliberative conception of democracy according to which those subject to political power must be able to see their political institutions and laws as the outcome of their own free and reasoned public deliberation as equals.<sup>14</sup>

I leave a number of more concrete questions in democratic theory open. I do not, for example, assume any particular theory of political equality, which would be needed to tell us more precisely what kinds of participatory institutions meet the second condition of democratic legitimacy.<sup>15</sup> Whether democratic legitimacy requires participation in the literal sense advocated by participatory democrats, or is compatible with representation or other means of institutional articulation, I leave open. I simply use “participation” here in whatever sense is required for persons to be able to see themselves as the free and equal authors of the laws to which they are subject.

Readers should fill out the normative and institutional details that reflect their favourite elaboration of democratic theory. They should not, however, saddle my application of democratic theory to the unfamiliar terrain of borders with unattractive baggage lifted from implausible versions of the theory that wreak normative havoc on familiar domestic terrains as well. They should also bear in mind that the two conditions I have imposed already have much bite. The second condition rules out, for example, reducing democratic participation to direct simple majoritarian voting, where an entrenched majority may, without deliberative reasons, simply impose laws on an entrenched minority.<sup>16</sup>

Concomitantly, the first condition implies that justice in the liberal sense is not a sufficient condition for democratic legitimacy: a set of laws may pass the liberal test of hypothetical justification but still lack democratic legitimacy if the laws were simply the edicts of an enlightened autocrat. The modern democratic theory of popular sovereignty interprets the autonomy principle to require political institutions that can be seen as the medium for the collective *self-determination* of the people subject to them. The democratic principle of self-determination might follow from the ideal of personal autonomy in either of two ways: either because democratic political institutions are *instrumentally* necessary for the protection of personal autonomy from coercive encroachment or because being able to see oneself as the author of the laws to which one is subject is *inherently* necessary for a justification of coercion consistent with autonomy.<sup>17</sup> In either case, what distinguishes democratic theory from liberalism is the principle of self-determination.

### **Liberal Universalism versus Democratic Particularism?**

Despite the common grounding of liberal and democratic theory in the values of freedom and equality, many believe that the two theories part company precisely on the question of civic and territorial state boundaries. The view that there is a fundamental tension between liberalism and democratic theory here has become so well established that liberals such as Philip Cole, who are averse to democratic defences of closed borders, feel compelled to restrict the scope of democratic theory: “We [liberal egalitarians] believe that the moral equality of persons . . . [sets] limits to self-determination; some matters can rightly be held to lie beyond the scope of

the democratic powers of any body of people. Such limits upon democratic power are familiar within liberal political philosophy."<sup>18</sup> What Cole takes for granted is that democratic theory cuts against liberalism's demand for open borders.

The ostensible tension is made explicit by Jean Cohen, according to whom liberalism is "universalizing and inclusive but apolitical and individualistic," while democracy is "political, internally egalitarian and uniform but externally exclusive and particularizing."<sup>19</sup> Similarly, Chantal Mouffe asserts that, in contrast to liberalism, the "democratic conception [of equality] requires the possibility of distinguishing who belongs to the demos and who is exterior to it; for that reason, it cannot exist without the necessary correlate of inequality."<sup>20</sup> While liberalism is supposed to refer to a set of *universal* rights enjoyed by persons qua human beings, democracy is supposed to refer to a set of civil or political rights enjoyed by persons qua *members* of *particular* political communities. The putative difference over borders, then, can be understood to be the logical consequence of the fundamental difference between liberalism and democratic theory: while liberalism requires hypothetical justification, the democratic principle of self-determination demands actual, institutionalized discursive political processes dependent on mobilizing citizens' participation as a democratic people.<sup>21</sup>

On the view in question, democracy presupposes a collective demos forming a *particular* political community: it is inherently bounded, distinguishing between members and nonmembers. Thus Frederick Whelan has concluded that while "liberalism in its fully realized form would require the reduction if not the abolition of the sovereign powers of states . . . especially those connected with borders and the citizen-alien distinction," democracy, by contrast, "practically requires the division of humanity into distinct, civically bounded groups that function as more or less independent political units . . . democracy requires that *people* be divided into *peoples*."<sup>22</sup>

Of course to say that democracy requires the existence of boundaries (i.e., differentiated political jurisdictions) is not to say anything about the kind of regime of border control it requires: democracy may require boundaries, but not closed boundaries under unilateral domestic control. The issues of *existence* and *control*, though related, must not be conflated. The mere existence of a border delineating distinct political jurisdictions does not necessarily entail anything about its regime of border control, which comprises the reigning *entry policy* (how open, porous, or closed the border is) and *who controls* the entry policy. The border between Ontario and Manitoba exists, but the entry policy is open and jointly determined through federal institutions.

Defending the putative right to control and close one's borders unilaterally requires a further argument. This argument is invariably made again by appeal to the distinctly democratic principle of self-determination, which, it is claimed, intrinsically requires unilateral border control. As Whelan puts it, if according to democratic theory "the operation of democratic institutions should amount to "self-determination," or control by the people over all matters that affect their common interests," and if, as seems true, the "admission of new members into the democratic group" counts as "such a matter" affecting "the quality of their public life and the character of their community," then it would appear that the principle of democratic self-determination requires the right to control borders and membership unilaterally.<sup>23</sup> This is precisely Michael Walzer's view: he goes so far as to say that "admission and exclusion . . . suggest the deepest meaning of self-determination."<sup>24</sup>

On the common view of borders, the fundamental tension between liberalism and democratic theory consists in the fact that liberal universalism calls for the treatment of all human beings impartially and hence for open borders, while the democratic principle of popular sovereignty (and its corollary, the principle of self-determination) mandates collective control, without outside interference, over the affairs of the political community, including the regulation of its borders. It is the second half of this view that I want to challenge: that the democratic theory of political legitimacy, its principle of self-determination in particular, yields a right to unilaterally control one's own borders.

## **The Democratic Justification Thesis and the Unbounded Demos Thesis**

The initial question is whether there are any considerations intrinsic to democratic theory that create a presumption either in favour of unilateral domestic border control or in favour of joint control by citizens and foreigners. The answer depends on to whom democratic justification is owed. Whether a closed border entry policy under the unilateral control of citizens is democratically legitimate cannot be known until we first know to whom the justification of a regime of control is owed. My thesis is that, according to democratic theory, *the democratic justification for a regime of border control is ultimately owed to both members and nonmembers.*

The argument for this apparently radical thesis is surprisingly simple. The argument's first premise simply states the normative democratic

principle of political legitimation; its second premise notices an obvious empirical fact. 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.

Notice what the argument does *not* say. It does not say that all those who are *affected* by a political regime are owed democratic justification (and hence rights to democratic participation). My argument appeals to a more restricted principle, which refers not to whom the political regime affects, but to whom it *subjects to coercion*. The all-affected principle would, to be sure, make my case easier and yield conclusions just as strong as the ones I draw.<sup>25</sup> I do not appeal to it, however, not because I reject it, but because I do not need it. Since the autonomy principle is more restricted, the fact that my argument still goes through testifies to the robustness of the conclusion.<sup>26</sup>

I take it that the argument's point of controversy lies in its tacit premise, which is reflected in the reference to "all" in the first premise—that is, a reference to all *persons* rather than *citizens* (members). This formulation of the democratic theory of popular sovereignty tacitly presupposes that the demos to whom democratic justification is owed is in principle unbounded. This is what I call the *unbounded demos thesis*, and it is precisely the thesis rejected by those who pit democratic theory against liberalism on the question of borders.<sup>27</sup> Recall that these theorists do so on the grounds that collective self-determination, which the democratic theory of popular sovereignty demands, presupposes an inherently bounded demos. Thus, the obvious objection to the argument is that its first premise reflects the universalist *liberal* interpretation of the autonomy principle, not the required particularist *democratic* interpretation. My argument in support of the unbounded demos thesis proceeds by demonstrating that the contrary thesis—that is, the thesis that the demos is inherently bounded—is incoherent. This incoherence stems from two problems in democratic theory.

The first is what Whelan has called the *boundary problem*. It arises as soon as one conceives democratic legitimation to require that the exercise of political power correspond to the will of "the people." The question then is who the people comprises. The boundary problem consists in the fact that democratic theory is unable to specify, in terms consistent with its own theory of political legitimacy, the boundaries of the people that forms its

constituency. Regardless of the kind of participation that democratic legitimacy requires to legitimate the exercise of political power, the obvious question is, *whose* participation is necessary for legitimation? Equally obviously, this question of membership ultimately cannot itself be settled by a principle of participation: for we would once again have to ask, *whose* participation must be sought to answer the question of membership, which in turn raises a second-order membership question, *ad infinitum*. As Whelan argues, “The boundary problem is one matter of collective decision that cannot be decided democratically. . . . We would need to make a prior decision regarding who are entitled to participate in arriving at a solution. . . . [Democracy] cannot be brought to bear on the logically prior matter of the constitution of the group itself, the existence of which it presupposes.”<sup>28</sup> Democratic theory is incapable of legitimating the particular boundaries that, once we assume the demos is inherently bounded, it presupposes.

The second problem reflects the fact that democratic theory *requires* a democratic principle of legitimation for borders, because borders are one of the most important ways that political power is coercively exercised over human beings. Decisions about who is granted and who is denied membership, and about who controls such decisions, are among the most important instances of the exercise of political power. We should keep in mind what we are talking about here: modern border controls rely on a terrifying array of coercive apparatuses, ranging from police dogs, electric wires, and helicopters, to incarceration, deportation, torture, shooting on sight, and so on. The point is that, *by its very nature*, the question of boundaries poses an *externality problem*: while democracy claims to legitimate the exercise of political power by reference to those over whom power is exercised, civic boundaries, which by definition distinguish between members and nonmembers, are always instances of power exercised over both members *and nonmembers*—and nonmembers are precisely those whose will, views, or interests the bounded democratic polity claims to be able legitimately to ignore. In other words, the act of constituting civic borders is always an exercise of power over both insiders and outsiders that intrinsically, by the very act of constituting the border, disenfranchises the outsiders over whom power is exercised. It is this *conceptual* feature of civic borders that confronts democratic theory with an externality problem. (The problem transfers directly onto territorial borders insofar as citizenship is the criterion for restricting entry.)

The assumption that the demos is inherently bounded thus leads to a logically incoherent theory of political legitimacy. First, the boundary problem renders the traditional democratic theory of bounded popular sovereignty

incoherent because of the consequent commitment to incompatible propositions: on one hand, that the exercise of political power is only legitimated by corresponding to the will of the people and, on the other hand, that the political determination of the boundaries constituting the people is legitimate even though those boundaries are not (and could not be) the product of the people's will. The second source of incoherence is the externality problem. On one hand, the democratic theory of political legitimacy requires justifying the exercise of power to those over whom power is exercised. On the other hand, the assumption that the demos is inherently bounded makes fulfilling this criterion impossible *conceptually speaking*: by virtue of what a (civic) border is conceptually, constituting it is always an exercise of power over persons who, in the very act of constituting the border, are excluded from the membership to whom power is justified.

The source of incoherence, however, is not democratic theory as such: both the boundary and externality problems are artefacts of the democratic theory of *bounded* popular sovereignty. The view that the demos is inherently bounded leads to incoherence, but it rests on a mistaken reading of the principle of democratic legitimacy. This mistaken reading assumes that political power is democratically legitimate only insofar as its exercise corresponds to a prepolitically constituted "will of the people."<sup>29</sup> On this account, the will of the people must be prepolitically constituted because might cannot by itself make right: thus, the exercise of political power must find its legitimating principle in something *prior to* itself. But to speak of a collective will at all, the people must have some corporate existence; and for its will to be the legitimating *source*, rather than outcome, of political power, this corporate people must exist by virtue of some quality specified prior to, or independently of, the exercise of political power. Thus, on this mistaken reading, democratic legitimacy *presupposes* a prepolitically constituted, bounded, corporate people (whose will legitimates the exercise of political power). The upshot is that democratic theory itself cannot *generate* an answer to who the people is; it presupposes an answer. This is the source of incoherence.

Once we abandon this implausible picture of the demos as a prepolitically constituted, really existing corporate entity, an alternative reading of democratic legitimacy comes into view: the view that political power is legitimate only insofar as its exercise is mutually justified by and to those subject to it, in a manner consistent with their freedom and equality. This is the view that I articulated from the outset. There is no question here of a prepolitically constituted corporate will. The democratic principle of legitimacy simply requires replacing coercive relations with relations of discursive

argumentation, and legitimating the remaining instances of coercion by subjecting them to participatory discursive practices of mutual justification on terms consistent with the freedom and equality of all. On this view, democratic theory *does* provide an answer to the boundary question: the reach of its principle of legitimation extends as far as practices of mutual justification can go, which is to say that the demos is in principle unbounded. Hence, even the drawing and control of boundaries must ultimately be justified to those whom the boundaries are meant to define as nonmembers.

The upshot of the unbounded demos thesis is that a closed border entry policy could be democratically legitimate only if its justification is addressed to both members and nonmembers or is addressed to members whose unilateral right to control entry policy itself receives a justification addressed to all. In either case, the regime of control must ultimately be justified to foreigners as well as citizens. As a consequence, a state's regime of border control could only acquire legitimacy if there were cosmopolitan democratic institutions in which borders received actual justifications addressed to both citizens and foreigners. Obviously no such participatory institutions presently exist at the global level; at best, they exist in limited scope, for example between states in the European Union. The implication is that, from a democratic perspective, current regimes of border control suffer from a legitimacy gap: the unilateral regimes of border control that seem to flow naturally from the doctrine of state sovereignty are illegitimate from a democratic point of view. Democrats are required by their own account of political legitimacy to support the formation of cosmopolitan democratic institutions that have jurisdiction either to determine entry policy or legitimately to delegate jurisdiction over entry policy to particular states (or other institutions).

## The Self-Determination Argument

The unbounded demos thesis does not merely support the argument for why democratic theory intrinsically requires that regimes of border control be jointly determined by citizens and foreigners (unless democratically delegated to citizens). It also shows why the most important intrinsic democratic argument—the self-determination argument—for a polity's unilateral right to determine its own regime of border control fails. Michael Walzer suggests that democratic self-determination intrinsically requires the unilateral discretion to close one's borders to foreigners because without

border control a people could not be a “community of character” with its own distinctive way of life. Such discretion, he says, is part of the “meaning” of self-determination.<sup>30</sup> The incapacity to close borders would undermine the capacity of a people to pursue its own distinctive collective projects and goods (such as generous welfare programs, universal health care, or cultural protection);<sup>31</sup> and this incapacity to set the terms of political association would, in turn, undermine the autonomy of each citizen.

The unbounded demos thesis, however, draws our attention to what this characterization takes for granted: the appeal to self-determination here begs the question of who the relevant collective “self” rightly is. This is to beg precisely what is at issue for democratic theory. If in principle the demos is unbounded, then the self-determination of differentiated democratic polities is *derivative* of the self-determination of the “global demos” as a whole. The unbounded demos thesis does *not*, of course, rule out the potential legitimacy of political borders and differentiated jurisdictions. It simply confirms that the existence of political borders and their regimes of control require justification. If in principle the demos is unbounded, then the appeal to self-determination to justify the right of a *bounded* polity to determine its own regime of border control already presupposes that differentiated, bounded polities are indeed justified. This in turn implies that any putative justification for a particular regime of border control *must itself be consistent with the considerations that justify the existence of borders in the first place*. My thesis is this: the self-determination argument for the putative unilateral right to control and close one’s borders is on the whole incompatible with the most plausible liberal and democratic arguments for the existence of borders in the first place.

Consider (what I take to be) the five most plausible arguments, grounded in the value of autonomy, for the existence of boundaries: (1) the pluralist (or diversity) argument, (2) the dispersion-of-power argument, (3) the boundary-preferences argument, (4) the subsidiarity argument, and (5) the minority-protection argument. In each case, I consider first the justification for the *existence* of borders and then its compatibility with a unilateral *regime of border control*.

1. The first argument holds that a pluralistic political world is necessary to enable the flourishing of diverse collective ways of life: without political borders, such diversity would be wiped out in a sea of homogeneity. The value of such diversity, in turn, may be explained by its constitutive role in the ideal of autonomy. Recall that the ideal requires the existence of an adequate range of *valuable options* from which the individual can choose in shaping her own life.<sup>32</sup> Raz argues that the existence of such

valuable options in turn depends on the existence of widely practised social forms of behaviour giving them their significance.<sup>33</sup> Insofar as some social forms, and the effective pursuit of their characteristic goods, require the support of political institutions, then a plurality of political jurisdictions is a constituent of the ideal of autonomy: only then could an individual meaningfully choose between, say, the life options available in a libertarian society versus those available in a more egalitarian society.<sup>34</sup>

The self-determination argument for unilateral border control simply seeks to build on the insight behind the pluralist argument for the existence of borders: it asserts that the pursuit of distinct collective goods is dependent not just on the *existence* of borders but on the unilateral domestic capacity to *close* them.<sup>35</sup> (This, of course, is an empirical claim; I simply note that it is belied by the existence of regional diversity within federalist, confederal, and interstate regimes with centrally controlled and/or open sub-unit borders. Few expect the mere fact of open borders between France and Germany to turn the French into Germans. But the deeper, intractable problem with the argument lies at the normative level.) The intractable problem is that the value of diversity, to which the pluralist argument for the existence of borders appeals, would be wholly compromised if individuals seeking to enter and join some other political community were unilaterally excluded. The pluralist argument assumes that the flourishing of diverse ways of life is valuable, and hence borders instrumentally valuable, because diversity enhances autonomy by providing individuals with a range of valuable options. But if polities had the unilateral discretion to close their borders to foreigners, then it would no longer be clear why such diversity is valuable in the first place. If individuals were unilaterally denied the possibility of entering and joining other political communities, then the mere *existence* of diverse ways of (political) life protected by those borders would no longer provide them with valuable options. The argument is self-defeating: the self-determination argument for a unilateral right to close borders to foreigners, for the purpose of pursuing distinct collective goods, is incompatible with the pluralist argument for the existence of borders in the first place.<sup>36</sup>

2. The most distinctly liberal argument for differentiated, bounded political units rests on the classic liberal fear of concentrated political power and its potential to breed tyranny. Liberals have accordingly sought to thwart would-be tyrants, and the threat they pose to autonomy, by institutionally dividing and dispersing power.<sup>37</sup> Since the most terrifying tyranny of all would be a world tyranny, many see a plurality of political units as a crucial bulwark against tyranny.<sup>38</sup>

For any given individual, a localized tyranny is less terrifying than a global tyranny in two ways: other polities might serve as external catalysts for political change within the tyranny in the future, and they may promise safe haven abroad in the meantime. The first consideration is compatible with either unilaterally or jointly controlled and either open or closed borders, but the second flatly rules out unilaterally closed borders. Since obviously other polities can credibly promise safe haven only if it is actually possible to enter them, this argument for the existence of borders only works if those borders are not unilaterally closed borders.

3. The boundary-preferences argument appeals to the value of living in a political association the terms of which one can see as one's own. One of these terms may be who one's fellow citizens are: individuals typically have preferences that concern precisely *with whom they wish to share a collective life and political institutions*, that is, their preferences may concern the existence and nature of boundaries.<sup>39</sup> Thus the existence of borders is here justified as a mechanism for enabling the greatest number of individuals to share a polity with whom they wish. Some such justification, which appeals to the same consideration that the principle of freedom of association does, seems perfectly reasonable as a general justification for the *existence* of borders.

But a *regime of control* could not be simply justified by appealing, as libertarian defenders of freedom of association may be tempted to do, to the preferences of only those persons whom a particular border picks out as members. Consider a stylized two-state world with five groups of equal size and the following boundary-preferences: individuals from groups A and B prefer to associate politically together but not with individuals from groups C, D, or E; individuals from group C prefer to associate with D and E but not with A or B; and D and E prefer to associate with each other but not with A, B, or C. In that case, C would prefer to join D and E; A and B would prefer that they do so as well; but D and E prefer that they not. (C's situation is rather typical for refugees: consider the Jews feeling the Nazis aboard the *St. Louis*, whose ship was turned away by Cuban and U.S. authorities and returned to Europe.) But allowing D and E the unilateral right to deny entry or membership to C actually ends up preventing the satisfaction of a maximum number of boundary-preferences. Again, boundaries have externalities: they do not simply coercively impact putative *insiders*; they coercively impact putative outsiders as well. Would-be migrants from one polity to another can be thought to be expressing their preference about with whom they wish to share a political association; the protection of that

preference is one of the motivations behind defending freedom of mobility. The boundary-preferences argument for borders thus provides reasons both for *and against* the unilateral capacity to close borders: from the perspective of insiders, the boundary-preferences argument provides reason for granting insiders the capacity to close their borders; but from the perspective of outsiders, it provides reason for not doing so. The balance of reasons thus suggests allowing insiders *some* control over *porous* (and not closed) borders; the extent will presumably depend on the circumstances. But the boundary-preferences justification for borders is not compatible with simply asserting a unilateral right to control and close borders on the basis of self-determination.

4. The most distinctly democratic justification for boundaries, which appeals directly to the principle of self-determination, stems from the classic problem of scale: that the larger the polity, the less meaningful the individual's political participation and input, and the less responsive political institutions to her views, needs, and preferences. The "input" problem of citizen *control* arises insofar as democratic participation and control over the political institutions that shape one's environment are valued non-instrumentally, as constituents of living an autonomous life: an individual's control shrinks in proportion to the polity's size. The "output" problem of *responsiveness* arises insofar as democratic participation is valued instrumentally, as the best means for ensuring that political institutions are responsive to citizens' needs and preferences. The most efficient way for government to serve the diverse and particular interests of citizens may consequently be to assign political jurisdiction and responsibility to more local institutions.<sup>40</sup>

Some phenomena, however, are simply beyond the control of more local institutions, in which cases granting the individual greater "control" over political institutions via localism would be an empty gesture.<sup>41</sup> As a result, such arguments for differentiation converge on a principle of subsidiarity, according to which the smallest political units capable of exercising effective control over some matter ought to have jurisdiction. Hence, the question is whether a bounded polity's regime of border control should be under unilateral domestic jurisdiction or under some "higher" level of joint jurisdiction. The subsidiarity argument is motivated by the concern to maximize each individual's control over the factors that affect her life; the specific issue we are addressing now is control over boundary-preferences, that is, how to maximize the individual's control over the choice of with whom she shares

a polity. In other words, for the specific issue of border control, the subsidiarity argument converges with the boundary-preferences argument for the existence of borders, whose implications we have just seen.

5. The final argument seeks to protect the autonomy of members of minority groups. Recall that democratic theory interprets the ideal of autonomy politically to mean that an individual ought to be able to see the primary political institutions governing her life as protecting or reflecting the values and preferences that she holds. The minority-protection argument proceeds by noticing that individuals forming a majority within a particular democratic polity are more likely, and minorities less likely, to see their values reflected in its political institutions and collective public life. Minorities may thus have trouble seeing themselves as the authors of the laws under which they live.<sup>42</sup> The minority-protection argument defends differentiated jurisdictions as a way to protect entrenched minorities from perpetual political domination by entrenched majorities; borders permit a greater number of persons to live under political institutions that reflect their aspirations for the nature of collective public life.<sup>43</sup>

This argument for the existence of borders is not incompatible with the self-determination argument for unilateral domestic control. If the point of borders is to protect an entrenched minority (and its favoured terms of political association) from being overrun by foreigners who would end up dominating the polity and fundamentally transforming its character, then it is conceivable that, under some limited circumstances, democratic legitimacy would require granting at least *some* unilateral discretion in closing borders in order to protect a minority's political aspirations. This is because such discretion may be necessary for democratic participation to be carried out on terms consistent with the freedom and equality of members of the minority.<sup>44</sup>

In sum: of the five most plausible arguments for the existence of borders, only the minority-protection argument is compatible with the unilateral right to control and close one's borders to foreigners, and this only under very specific empirical conditions. But the other arguments all require at least porous borders under the joint control of citizens and foreigners. Once we adequately distinguish between arguments for the existence of borders and arguments for regimes of border control, the principle of self-determination is at most seen to favour *some* domestic control over border policy and *some* restrictions on entry—that is, jointly controlled and porous (not closed) borders.

## Conclusion

The tendency in the received literature is to frame debates in the ethics of borders in terms of a conflict between the individual “liberal” right to freedom of movement and the collective “democratic” right to self-determination—and then to weigh the liberal and democratic reasons for and against open borders. This way of framing things misconstrues the role of democratic theory here. Democratic theory identifies the kind of participatory politico-institutional frameworks within which such reasons, for and against, must be discursively weighed and treated in order for border policy to acquire democratic legitimacy. While there may be a number of potentially compelling (moral and prudential) reasons why, in the actual world, restrictions on membership or movement are hypothetically justifiable, I have not systematically sought to present or evaluate them here.<sup>45</sup> I have instead endeavoured to show that, first, a right to unilaterally control (and close) borders is incompatible with liberal and democratic reasons for the existence of borders (except under stringent circumstances) and, second, potential justifications for border restrictions must be addressed in democratic forums in which foreigners, on whom such restrictions coercively fall, also have standing to participate. To be democratically legitimate, any regime of border control must either be jointly controlled by citizens and foreigners or, if it is to be under unilateral citizen control, its control must be delegated, through cosmopolitan democratic institutions giving articulation to a “global demos,” to differentiated polities on the basis of arguments addressed to all.

This radical thesis will no doubt be confronted with numerous objections. Some will object that, by emphasizing foreigners’ subjection to border coercion, my argument ignores the putative fact that regimes of border control implicate the interests of citizens much more than those of foreigners. And since citizens (supposedly) have a greater stake, they ought to have a greater participatory say. The fact that some foreigners give up everything they know and risk their lives to cross state boundaries—think here of the Africans who risk the treacherous waters between Morocco and Spain—exposes the claim that citizens invariably have more at stake than foreigners for what it is: false. False at least in relation to these foreigners. But there is a kernel of truth to the unequal-stakes objection, and the strength of Raz’s triconditional account of autonomy is that it assimilates this kernel well, in a way that helps frame the institutional implications of my thesis. Recall the three conditions of autonomy—appropriate mental capacities, an adequate range of valuable options, and independence—and the three

corresponding ways in which coercion invades autonomy. Since border coercion invades the independence of *everyone* subject to it, a state wishing to place entry restrictions on foreigners owes those persons a democratic say. But border coercion undermines the first and second conditions of autonomy of only some foreigners. Thus, when thinking about the cosmopolitan democratic institutions necessary for legitimating regimes of border control, the second condition of autonomy suggests giving the weakest rights of participation to foreigners for whom the option of entry is of little value; a greater participatory say to foreigners for whom entry actually represents a valuable option; an even greater say to those for whom the option of entry is necessary to have an adequate range of valuable options; and perhaps the greatest say to citizens themselves.<sup>46</sup> (From a democratic perspective, of course, political decisions about which options are valuable to whom cannot legitimately proceed without the participatory input of the persons in question.) Determining precisely what kind of participatory rights and cosmopolitan democratic institutions would be consistent with the freedom and equality of all, and how much relative participatory say different foreigners and citizens ought to have, cannot be articulated without a precise theory of political equality. But the autonomy principle already provides a normative framework for taking account of differences amongst foreigners, as well as the particular circumstances of citizens (such as whether their autonomy requires minority-protection).

The question is, What is to be done? The illegitimacy of current regimes of border control makes it incumbent upon democratic polities, to maintain their democratic credentials, to support the formation of cosmopolitan democratic institutions of some form or another with jurisdiction to determine or delegate entry policy.<sup>47</sup> Such institutions could range from the maximally ambitious to the more modest, such as truly global political institutions (e.g., federal or confederal), multilateral interstate institutions, or transnational domestic institutions. Global institutions need not (indeed, on my deliberative account of democracy, should not) amount to simple majoritarian voting by the world's population—as I have suggested, the autonomy principle justifies differentiated participatory rights for citizens and different classes of foreigners. And while the five justifications for differentiated political jurisdictions are largely incompatible with unilateral border control, they are compatible with and, indeed, may favour granting special say to citizens over their own border's regime. More modestly, some polities might have especially strong reasons, because of the unequal distribution of stakes, to give each others' citizens standing in joint, multilateral democratic institutions determining their regimes of border control.

(Think here of the U.S.'s special relation to Mexico, and of current intra-EU border regimes.) Alternatively, democracies may grant foreigners from these polities transnational rights of political participation in domestic processes of border policy formation.<sup>48</sup>

The view defended here obviously does not *describe* institutional reality: even among democracies, the legal recognition of foreigners' rights in determining border policy is extremely limited currently. Empirically speaking, there is no global demos, at least not in the sense of an institutionally articulated people conscious of its own existence. My argument, and the unbounded demos thesis it presupposes, do not, however, purport to identify an empirically existing reality. My argument refers, rather, to a demos qua regulative principle, which provides a standard for judging the extent to which any empirically existing demos and its political institutions fall short of full democratic legitimacy. Nor is this principle imposed on existing reality from "nowhere": it is already implicit in the normative logic and principles of the institutions and practices of actually existing democracies.<sup>49</sup> This is the same regulative sense of demos by which it has been possible to advocate extension of the franchise to women on internal *democratic grounds*. Criteria of membership are a proper object of democratic scrutiny: there are good internal grounds for saying that a polity denying women rights of political participation compromises its *democratic* legitimacy. Such a polity would subject a class of persons to coercion without that subjection being democratically justified by and to the persons themselves. The regulative principle in the case of foreigners and borders is the same one.

It is not the role of such a regulative principle to lay out a blueprint either for "ideal institutions" or for the specific political actions that ought to be undertaken here and now to realize them. The unbounded demos qua regulative principle provides a standard for critique, but the implications for which institutional designs are ideal, and which political actions are best, depend on contingent historical circumstances. One thing about *our* circumstances is clear, however: in terms of their democratic legitimacy, today's regimes of border control cannot get much worse. Whatever else democratic legitimacy demands today, it demands giving greater voice to foreigners over border control. Since the feasibility and effectiveness of any given set of institutions are unpredictable beforehand, and will only be learned through trial and error, the institutional details must be worked out politically. That they ought to be worked out is clear enough.<sup>50</sup>

## Appendix

### On Coercion

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Are foreigners, even those who never present themselves at the border or never seek citizenship, really subject to border coercion? Yes. To see this, one must distinguish between being *actually (successfully) coerced* and being *subject to coercion*. The state actually coerces a person's action only when it successfully helps prevent her from doing something she otherwise likely would have. The peaceful (in)action of a would-be murderer, for example, is actually coerced by the state only if the coercive acts or threats of state agents helped prevent her from committing murder. But while a person whose actions are actually coerced is also *subject to coercion*, the actions of a person subject to coercion are not necessarily actually (successfully) coerced. And saying that a person or institution is *coercive* is simply to say that it subjects others to coercion.<sup>51</sup> Being subject to coercion is normatively significant because, according to the autonomy principle, such subjection is sufficient to trigger a demand for justification. (The normative significance of someone's action being *actually* coerced is different: it normally renders an otherwise blameworthy action morally excused or even justified.) Moreover, since the relevance of coercion to my argument is that it is sufficient to trigger a demand for justification, I take coercion to include both *coercive acts* (noncommunicative coercion) and *coercive threats* (communicative coercion).<sup>52</sup>

The paradigmatic example of the first kind of coercion by the state is imprisonment. An agent *subjects* another to noncommunicative coercion only if it undertakes an intentional act, or effectively authorizes a future act by its agents, whose normal effect is preemptively to deprive a person of the possibility of acting in some way she otherwise could have.<sup>53</sup> This specifies only a necessary condition. I take it that the actual use or the effective authorization of the future use of *physical force* against the person—either directly acting upon the person's body or restricting the physical space in which her body can move—is sufficient for the act to count as coercive. (Sufficient, but not necessary: I leave open the possibility that other non-communicative preemptive acts may also count as coercive.) Hence, the state subjects a person to coercion if its agents use physical force (e.g., pushing around and doing violence to people's bodies or erecting physical barriers to their movement) or are authorized and able to use such force against the person with the normal effect of preemptively preventing or compelling some behaviour if attempted. The coercee is subject to coercion

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regardless of whether or not the state's agents successfully prevent or compel that behaviour and regardless of the intentions of the coercee. For example, a person is subject to state coercion even if she succeeds in murdering despite the fact that the police attempted forcibly to prevent her action. She is also subject to coercive laws against murder even if she is not the type and, never having any murderous intentions, does not need coercive laws to stay her hand.<sup>54</sup> Similarly, while a person who wishes to roam free but is successfully held in prison by the state is actually coerced, a person who escapes by breaking the locks and beating back the guards, or who enjoys prison and has no desire to leave, though she is not actually (successfully) coerced to stay, is nonetheless subject to coercion. The subjection is sufficient to trigger the demand for justification.

The paradigmatic example of the second kind of coercion is threatening to kill a person if she does not comply. The following definition helps distinguish being *subject* to a *coercive threat* from being actually coerced by it. P's threat subjects Q to coercion only if

1. P communicates to Q his intention to cause outcome X if Q undertakes action A.
2. Q believes that  $X \cap A$  is worse for her than  $(\sim X) \cap (\sim A)$ , such that X provides Q a reason not to do A.
3. P's reason for threatening X is his belief that X provides Q a reason not to do A.
4. Q believes that P has the capacity to cause X and intends to do so if Q does A.

But P's threat *actually coerces* Q's (in)action only if two further conditions are met as well:

5. Q does not do A.
6. Part of Q's reason for not doing A is to avoid X.

These criteria specify *necessary* conditions for coercive threats.<sup>55</sup> As Raz points out, specifying *sufficient* conditions will depend on the normative significance of coercion. For our purposes here, its significance lies at least in the fact that it always invades autonomy, which is equivalent to saying that, in addition to the descriptive conditions above, the following necessary normative condition for coerciveness obtains:

- N: P's threat invades the autonomy of Q.

Moreover, I propose the following condition which, when combined with 1 to 4 plus N, is *sufficient* for a threat to subject Q to coercion (and which, when combined with 1 to 6 plus N, is sufficient for it actually to coerce Q):

S: X involves the use of physical force against Q.<sup>56</sup>

Thus a person who avoided speaking in public because the law threatened imprisonment was actually coerced into not speaking. But a person who, despite a law against public expression, nonetheless spoke (violating condition 5) was still subject to the law's coercive threat. Moreover, a person for whom the law's coercive threat played no role in her decision—since she never had any intention of speaking (violating condition 6)—was also subject to legal coercion.

Combining condition N (which implies that a coercive threat is sufficient for invading autonomy) with S (which implies that a threat of physical force meeting conditions 1 to 4 is sufficient for it to be coercive) yields the following: subjecting a person to the threat of physical force meeting conditions 1 to 4 is sufficient to invade the person's autonomy.<sup>57</sup> Such a threat invades a person's autonomy, regardless of whether she has any interest in carrying out the proscribed action A, and regardless of whether she is left with an otherwise adequate range of valuable options, because such a threat invades her independence. It invades her independence because it threatens to interfere with the setting and pursuit of her own ends by using her body for purposes that are not her own. The focus here is not on how the person and her interests (beyond the interest in autonomy) are *affected*, but on how she is *treated*.<sup>58</sup> The point is illustrated, once again, by the happy slave, whose enlightened master has left her an adequate range of valuable options and who does not wish to leave his protection, but who is nonetheless under threat of corporal punishment if she attempted escape. The threat subjects her to coercion and invades her autonomy.

The upshot is this: Mexicans and Zambians who (1) are prevented from crossing the U.S. border by U.S. agents using physical force and those who (2) avoid crossing because of the coercive threat of U.S. legal sanctions share the honour of being subject to coercion with those who (3) illegally do cross the border and those who (4) never had any intention of entering. (All groups are subject to the effective authorization of coercive acts and to coercive threats; group 1 is actually [noncommunicatively] coerced; groups 2, 3, and 4 fulfil conditions 1 to 6, 1 to 4, and 1 to 5, respectively; all fulfil condition S.) Since autonomy is invaded whenever a person is subject to

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coercion, according to the autonomy principle state actions and laws must be justified not only to those whom they *actually* coerce, but to everyone whom they *subject* to coercion. The fact that a person can on occasion successfully evade a coercive law, or was never tempted by the outlawed action, does not annul the requirement of justification—whether the law regulates killing, public speech, or crossing boundaries.<sup>59</sup> This is what the first premise of my argument against unilateral border control expresses: democratic legitimation requires that coercive laws be justified to all those subject to them.

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### Notes

1. For a defence, see Kay Hailbronner, “Citizenship and Nationhood in Germany,” in *Immigration and the Politics of Citizenship in Europe and North America*, ed. W. R. Brubaker (Lanham, MD: University Press of America, 1989).

2. I use the terms “boundaries” and “borders” interchangeably.

3. Carens, “Aliens and Citizens,” *Review of Politics* 49 (1987): 251–73; Carens, “Migration and Morality,” in *Free Movement*, ed. Brian Barry and Robert E. Goodin (University Park: Pennsylvania State University Press, 1992); cf. Philip Cole, *Philosophies of Exclusion* (Edinburgh, UK: Edinburgh University Press, 2000); Howard Chang, “Immigration Policy, Liberal Principles, and the Republican Tradition,” *Georgetown Law Journal* 85, no. 7 (1997): 2105–19; and Peter Schuck, “The Transformation of Immigration Law,” *Columbia Law Review* 84, no. 1 (1984): 1–90.

4. See Seyla Benhabib, *The Rights of Others* (Cambridge, UK: Cambridge University Press, 2004), 7–12; Bas Schotel, “How Political and Legal Theorists Can Change Admission Laws,” *Ethics and Economics* 4, no. 1 (2006).

5. See David Owen, “Resistance in Movement” (Philosophy and Social Sciences Conference, Institute of Philosophy, Prague, Czech Republic, May 2005).

6. Charles Beitz, *Political Equality* (Princeton, NJ: Princeton University Press, 1989), 16–17, argues that the most “generic” conception of democracy merely requires citizens’ participation in political decision-making, and not their equality or equal participation. My argument is restricted to theories of democracy committed to equality.

7. See Joseph Raz, *The Morality of Freedom* (Oxford, UK: Clarendon, 1986), 6–17; cf. Charles Taylor, *Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), 219.

8. Raz, *Morality of Freedom*, 154–55, 369.

9. *Ibid.*, 372–78; cf. Michael Blake, “Distributive Justice, State Coercion, and Autonomy,” *Philosophy & Public Affairs* 30, no. 3 (2002): 257–96, 268–70.

10. Raz, *Morality of Freedom*, 377–78, 410. The fact that coercion always undermines independence is why Grant Lamond is mistaken to say that “particular instances of coercion can leave personal autonomy unscathed” if they leave intact an adequate range of valuable options. Lamond, “The Coerciveness of Law,” *Oxford Journal of Legal Studies* 20, no. 1 (2000): 39–62, 61.

11. See the appendix for elaboration and formal definition.
12. See Blake "Distributive Justice," 281–82; and Raz, *Morality of Freedom*, 156.
13. The term "hypothetical" does not commit liberalism to factorial deontology. See Thomas Pogge, "What We Can Reasonably Reject," *Philosophical Issues* 11 (2001): 118–47, particularly 141.
14. See Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, ed. A. Hamlin and Philip Pettit (Oxford, UK: Basil Blackwell, 1989); Jürgen Habermas, *Between Facts and Norms* (Cambridge, MA: MIT Press, 1996); Seyla Benhabib, "Toward a Deliberative Model of Democratic Legitimacy," in *Democracy and Difference* (Princeton, NJ: Princeton University Press, 1996); James Bohman, *Public Deliberation* (Cambridge, MA: MIT Press, 1996); and Frank Michelman, "How Can the People Ever Make the Laws?" in *Deliberative Democracy*, ed. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997).
15. See Beitz, *Political Equality*.
16. Joshua Cohen, "Reflections on Habermas on Democracy," *Ratio Juris* 12, no. 4 (1999): 385–416.
17. Quentin Skinner, *Machiavelli* (Oxford, UK: Oxford University Press, 1981), attributes something like the former view to Machiavelli. Frederick Neuhouser, "Freedom, Dependence, and the General Will," *Philosophical Review* 102, no. 3 (1993): 363–95, attributes the second view to Rousseau.
18. Cole, *Philosophies of Exclusion*, 184.
19. Cohen, "Changing Paradigms of Citizenship and the Exclusiveness of the Demos," *International Sociology* 14, no. 3 (1999): 245–68, 250; cf. Benhabib, *Rights of Others*, 19, 45–47, 219; and Jürgen Habermas, *The Postnational Constellation* (Cambridge, MA: MIT Press, 2001), 107–9. On the putative tension between liberalism and democracy, see Carl Schmitt, *The Crisis of Parliamentary Democracy* (Cambridge, MA: MIT Press, 1985) and Chantal Mouffe, *The Democratic Paradox* (London: Verso, 2000).
20. Mouffe, *Democratic Paradox*, 39.
21. See, for example, Charles Taylor, "The Dynamics of Democratic Exclusion," *Journal of Democracy* 9, no. 4 (1998): 143–56.
22. Whelan, "Citizenship and Freedom of Movement," in *Open Borders? Closed Societies?* ed. Mark Gibney (New York: Greenwood, 1988), 16–17, 28.
23. *Ibid.*, 28.
24. Walzer, *Spheres of Justice* (Oxford: Blackwell, 1983), 62.
25. On the globalizing implications of the all-affected principle, see Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 40–68.
26. For an explanation of why a state's regime of boundary control subjects all foreigners to coercion (and for a formal definition of *subjection to coercion*), see the appendix. I restrict the argument to coercion, as picked out by the autonomy principle, on methodological grounds, and not because I discount the need to justify the exercise of other forms of political power (e.g., ideological manipulation) that affect people but may not qualify as coercion.
27. The unbounded demos thesis is neither a properly normative nor empirical thesis. It makes an *a priori* (conceptual or metaphysical) claim about a constitutive feature of "the demos," which is a term used in normative democratic theory's principle of legitimation (PL). At its most abstract, PL is: The justification of the exercise of political power is owed to the demos over whom it is exercised. According to the *bounded* demos thesis, PL is meaningful only if "demos" refers to an institutionally articulated set of persons from which some persons

are necessarily excluded. The *unbounded* demos thesis denies this and claims that “the demos” in PL is properly glossed as “all persons.” For a defence of the claim that giving articulation to a group does not constitutively require (either conceptually or metaphysically) excluding some persons, see Arash Abizadeh, “Does Collective Identity Presuppose an Other?” *American Political Science Review* 99, no. 1 (2005): 45–60.

28. Frederick G. Whelan, “Prologue: Democratic Theory and the Boundary Problem,” in *Nomos 25: Liberal Democracy*, ed. J. Roland Pennock and John Chapman (New York: New York University Press, 1983), 22, 40; cf. Robert Dahl, *After the Revolution?* (New Haven, CT: Yale University Press, 1970), 59–63.

29. For a critique of this substantialist conception, see Habermas, *Between Facts and Norms*, 463–90; cf. James Bohman, “From *Demos* to *Demoi*,” *Ratio Juris* 18, no. 3 (2005): 293–314, 296.

30. Walzer, *Spheres of Justice*, 62.

31. For welfare, see Joseph Carens, “Immigration and the Welfare State,” in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton, NJ: Princeton University Press, 1988), 222; for culture, see Will Kymlicka, “Territorial Boundaries,” in *Boundaries and Justice*, ed. David Miller and Sohail Hashmi (Princeton, NJ: Princeton University Press, 2001), 265–66; Carens, “Migration and Morality,” 37–39; and James Woodward, “Commentary,” in *Free Movement*, ed. Brian Barry and Robert E. Goodin (University Park: Pennsylvania State University Press, 1992), 64.

32. Raz, *Morality of Freedom*, 369, 369–81.

33. Raz, *Morality of Freedom*, 308–10. “Freedom depends on options which depend on rules which constitute those options . . . [which in turn] presuppose shared meanings and common practices.” Joseph Raz, *Ethics in the Public Domain*, rev. ed. (Oxford, UK: Clarendon, 1995), 176.

34. cf. Jeff McMahan’s discussion of cultural pluralism in “The Limits of National Partiality,” in *The Morality of Nationalism*, ed. Robert McKim and Jeff McMahan (New York: Oxford University Press, 1997), 123.

35. “The distinctiveness of cultures and groups depends upon closure and, without it, cannot be conceived as a stable feature of human life. If this distinctiveness is a value . . . then closure must be permitted somewhere.” Walzer, *Spheres of Justice*, 39.

36. One reader has objected that autonomy is here compromised only if a state *in fact* closes its borders, and not if it merely has the unilateral right to do so. But even if the objection’s premise (that autonomy is not compromised by the unilateral right to close borders) were true, it would not salvage the self-determination argument. For the consequence of the pluralist argument is at least to deny citizens the unilateral right to *close* their borders, which means that, to remain compatible with the pluralist argument, the self-determination argument can at most establish unilateral domestic border “control” in the limited sense of *administering* a policy over which citizens have little say (because borders must not be closed). This undermines the self-determination argument because its case for unilateral control was grounded in the putative need for the right to *close* borders; establishing this right to close borders is the point of the self-determination argument. Moreover, the objection’s premise is not true. If the autonomy of foreigners limits what citizens can rightly do concerning border policy, from a democratic perspective it is insufficient to have the limit (and the correlative rights of foreigners) respected thanks to the goodness of citizens’ hearts. If foreigners have standing in justification, democracy demands a right of participation. If democracy is justified *instrumentally*, it demands a right of participation as necessary *means* for safeguarding persons’ autonomy (and consequent rights). If it is justified *noninstrumentally*, it claims that persons are autonomous only insofar as they can see themselves as the authors of their own politically

enforced rights and obligations, rather than enjoying them thanks to the pleasure of an enlightened but unaccountable autocrat. (The last point can be theorized in terms of Jürgen Habermas's "co-originality" thesis, which I accept but cannot defend here. The thesis holds that the grounds justifying the liberal principle of "human rights," which limits how political power can be rightly exercised, are the same grounds that justify the democratic principle of "popular sovereignty," which mandates rights of political participation.) Habermas, *The Inclusion of the Other* (Cambridge, MA: MIT Press, 1998), chap. 10.

37. Montesquieu, *L'Esprit des lois*, book IX, chap. 1.

38. cf. Whelan, "Citizenship and Freedom of Movement," 25. See Walter Berns, "The Case Against World Government," in *Readings in World Politics*, ed. R. A. Goldwin (New York: Oxford University Press, 1959); and, for a critique, Janna Thompson, *Justice and World Order* (New York: Routledge, 1992), 93–98.

39. For example, see John Rawls's Millian view that citizens of democracies wish to share a polity with persons with whom they share "common sympathies." Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 24.

40. This instrumental justification, on efficiency grounds, corresponds to Robert E. Goodin's consequentialist justification for special duties and political borders. See Goodin, "What Is So Special about Our Fellow Countrymen?" *Ethics* 98, no. 4 (1988): 663–86, 681.

41. See Robert Dahl, "Can International Organizations be Democratic?" in *Democracy's Edges*, ed. Ian Shapiro and Casiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999), 22.

42. Political liberals have responded to this by demanding that the state remain, in its constitutional essentials, neutral between different conceptions of the good. But, as liberals themselves have increasingly recognized, political institutions cannot be wholly neutral culturally, since they necessarily recognize some particular language(s) as the language of political life. See Will Kymlicka, *Multicultural Citizenship* (Oxford, UK: Clarendon Press, 1995), 111–15.

43. The minority-protection argument has affinities with the "recognition argument" that Alan Patten advances to defend separate political jurisdictions, but is stripped of problematic nationalist assumptions about the nature of, and relationships between, identity, culture, and values. See Patten, "Democratic Secession from a Multinational State," *Ethics* 112 (April 2002): 558–86. Liberal nationalists such as Kymlicka argue for the existence of borders by claiming that they are necessary instruments for protecting distinct national cultures, which is in turn necessary for autonomy. Kymlicka, *Multicultural Citizenship*, chap. 5; Kymlicka, "Territorial Boundaries," 266. As Patten has shown elsewhere, however, this argument only succeeds under quite restricted conditions. Patten, "The Autonomy Argument for Liberal Nationalism," *Nations and Nationalism* 5, no. 1 (1999): 1–17. Kymlicka's other arguments—that regulating borders is instrumentally necessary for nation-building, which in turn is necessary for a modern economy, social solidarity, and the mutual understanding and trust necessary for democracy—depend on problematic empirical claims. Kymlicka, "Territorial Boundaries," 265–66. For a critique of such claims, see Arash Abizadeh, "Does Liberal Democracy Presuppose a Cultural Nation?" *American Political Science Review* 96, no. 3 (2002): 495–509.

44. On the relation between the two conditions of democratic legitimacy (participation and freedom/equality), see Cohen, "Reflections on Habermas on Democracy."

45. For discussion, see Mark Gibney, ed., *Open Borders? Closed Societies?* (New York: Greenwood Press, 1988); Brian Barry and Robert E. Goodin, eds., *Free Movement* (University Park: Pennsylvania State University Press, 1992); David Miller and Sohail Hashmi, eds., *Boundaries and Justice* (Princeton, NJ: Princeton University Press, 2001); and *Ethics and Economics* 4, no. 1 (2006).

46. One reader has suggested that this introduces the all-affected principle through the back door. It is true that the autonomy principle is sensitive to interests (i.e., value). But it is nonetheless more restricted than the all-affected principle because this sensitivity is only activated for differentiating amongst those who are already subject to coercion. Having valuable options at stake is not sufficient for the autonomy principle to trigger a demand for justification. One must be subject to coercion.

47. The fact that border control is recognized by the United Nations as falling under individual states' jurisdiction obviously does not count as delegation in the *democratic* sense (meeting the participation and equality/freedom conditions) necessary for legitimation.

48. For preliminary explorations of how cosmopolitan democratic arrangements could be articulated institutionally, see Daniele Archibugi, David Held, and Martin Köhler, eds., *Re-Imagining Political Community* (Stanford, CA: Stanford University Press, 1998).

49. cf. Benhabib, "Toward a Deliberative Model," 84.

50. As Schotel puts it, "Launch and learn is the proper attitude" of activists in this domain. Schotel, "How Political and Legal Theorists Can Change Admission Laws," 8.

51. For the distinction between successful coercion and coerciveness, see Lamond, "Coerciveness of Law," 52; and Scott Anderson, "Coercion," in *Stanford Encyclopedia of Philosophy*, 2006, <http://plato.stanford.edu/> (accessed April 3, 2007). For an account (which Anderson rightly criticizes) that reduces coercion to "an achievement word" denoting success, see Michael Bayles, "A Concept of Coercion," in *Coercion: Nomos XIV*, ed. J. Roland Pennock and John Chapman (Chicago: Aldine, 1972), 19.

52. By contrast, Robert Nozick, "Coercion," in *Philosophy, Politics and Society: Fourth Series*, ed. Peter Laslett, W. G. Runciman, and Quentin Skinner (Oxford, UK: Basil Blackwell, 1972); and Michael Gorr, "Toward a Theory of Coercion," *Canadian Journal of Philosophy* 16, no. 3 (1986): 383–406, restrict their treatment to communicative coercion. For additional reasons for rejecting this restriction, see Anderson, "Coercion," and Virginia Held, "Coercion and Coercive Offers," in *Coercion: Nomos XIV*, ed. J. Roland Pennock and John Chapman (Chicago: Aldine, 1972).

53. Authorization does not constitute a coercive *threat* because it does not operate by communicating intentions to the coercee (though it may be accompanied by threats as well). Legally authorizing state agents preemptively to incapacitate a person about to commit murder is distinct from threatening to imprison a murderer after the fact. See Lamond, "Coerciveness of Law," 42–43.

54. As Held rightly argues, in these cases what "changes is not the coercive character of such laws, but the individual's interest in risking or not risking the consequences of violation." Held, "Coercion and Coercive Offers," 55.

55. I have adapted these conditions from Nozick, "Coercion," 102–6, and Raz, *Morality of Freedom*, 148–49. Conditions 1–6 roughly correspond to Nozick's conditions 1'; 2' and 7; 3; 6; 4; and 5'; and to Raz's conditions 1; 3 and 4(b); 2; 4(a); 5; and 6; respectively.

56. I would also defend two other conditions as each sufficient for a threat to be coercive when combined with 1–4 plus N:

S2: X leaves Q with an inadequate range of valuable options (and Q would have an adequate range were X avoided).

or

S3: X eliminates an option that is fundamental to Q's capacity to pursue her personal projects or life plan.

S3 captures what Raz calls a choice dictated by "personal needs." Raz, *Morality of Freedom*, 152–53.

57. More formally:

$$\begin{aligned} N: & q \leftarrow p; \text{ or } p \rightarrow q \\ S: & (r \cap o) \rightarrow p \\ \text{Therefore:} & (r \cap o) \rightarrow q \end{aligned}$$

where:

$$\begin{aligned} o = t & \text{ meets conditions 1–4} \\ p = t & \text{ subjects } Q \text{ to a coercive threat} \\ q = t & \text{ invades } Q\text{'s autonomy} \\ r = t & \text{ threatens physical force against } Q \end{aligned}$$

58. See Arthur Ripstein, "Authority and Coercion," *Philosophy & Public Affairs* 32, no. 1 (2004): 2–35.

59. One reader worries that my definition of being subject to a coercive threat—which is not conditional on the coercee's interest in undertaking the proscribed action—is too broad. The reader worries that the definition's (implausible) implication is that a Nigerian law criminalizing homosexuality in Nigeria subjects to coercion a U.S. citizen and resident with no interest in going to Nigeria, since it threatens him with sanctions should he go to Nigeria and engage in gay sex. This overlooks the difference between laws regulating borders and laws regulating actions within a state and, as such, is a misreading of condition 1 (and the law). It is true that some laws do claim universal jurisdiction and thus subject outsiders to coercive threats; as such, they are analogous to border laws and hence their legitimacy requires justification to outsiders. (The 1996 U.S. Helms–Burton Act threatens non-U.S. companies trading with Cuba; Belgium's 1993 universal jurisdiction law gave Belgian courts jurisdiction over atrocities not involving Belgians and committed outside Belgium.) But such laws are rare; normally, laws (as in the Nigerian example) do not address outsiders. What is distinctive about border laws (and the threats attached to them) is that they are *inherently* addressed to both insiders and outsiders (regardless of outsiders' interest in undertaking the proscribed action). A border law meets condition 1 vis-à-vis an outsider because the state P communicates its intention, say, to imprison outsider Q (outcome X) if Q undertakes to enter the state (action A). But a law criminalizing homosexuality in Nigeria does not threaten outsider Q if Q undertakes gay sex (action A). There is no question of universal jurisdiction here. To purport to meet condition 1 by equating "action A" with "undertakes to enter Nigeria and then engage in gay sex" is misleading because it conflates two different actions, border-crossing and sex, which are objects of distinct laws. Boundary laws not only address everyone, they are, as it were, prior to other laws: they normally define to whom other laws are addressed by limiting their jurisdictional scope. (The issue that the reader's example actually raises is the kind of democratic rights tourists or migrants ought to have by virtue of being subject to domestic laws—an issue beyond the scope of the present article.)

**Arash Abizadeh** teaches political theory at McGill University. His research is on democratic theory, identity, nationalism, cosmopolitanism, Rousseau, Hobbes, and critical theory. His publications appear in journals including *American Political Science Review*, *Philosophical Studies*, *Journal of Political Philosophy*, *History of Political Thought*, *Philosophy & Social Criticism*, *Review of Metaphysics*, and *Philosophy & Public Affairs*.