

The All-Affected Principle and Immigration

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Migrants and potential migrants are often affected by decisions in which they have not participated. For that reason, and because of my previous work on immigration, the editors of this book asked me to think about whether the All-Affected Principle might provide a useful perspective on immigration. I have concluded that, with a few important exceptions, the All-Affected Principle does not help very much to reflect more deeply about immigration.

This does not mean that I reject the All-Affected Principle. On the contrary, as the other chapters in this book make clear, this principle can be a valuable theoretical tool for identifying and exploring a wide range of questions about democratic inclusion. But like all tools, it is best used only on certain objects. The All-Affected Principle does help us to think about who should be included in decision making, but, in my view, in the case of immigration, the important questions are not about who should participate in decisions but about what those decisions should be, or more precisely, the moral constraints on the acceptable range of decisions about immigration policies and immigration regimes. Moral principles, especially democratic principles other than the All-Affected Principle, greatly constrain morally permissible collective choices about immigration. There is much less room for discretionary democratic self-determination in this area than is commonly assumed. Thus, the question of who should participate in decision making is correspondingly less urgent.

So, think of this chapter as a cautionary tale. Exploring some of the limitations of the All-Affected Principle with respect to the topic of immigration can serve as a reminder of the ways in which the All-Affected Principle needs to be supplemented by other principles and other perspectives when we engage in normative reflection.

In what follows I will identify what I see as the most important normative questions about immigration. I will then sketch briefly my answers to those questions, drawing primarily – and occasionally explicitly, though without

formal citations – upon a recent book.¹ I hope that the importance of the questions I am asking will be self-evident, even to those who disagree with my answers. I will consider whether the All-Affected Principle helps to answer those questions or to identify important related issues that have been neglected.

NOTES ON METHOD

Every inquiry takes place against a background of presuppositions: normative, empirical, intellectual, linguistic, etc. There is no Cartesian starting point in political philosophy. We have to bracket some questions so that we can focus on others. There are often good reasons for adopting one set of presuppositions rather than another, given a particular intellectual goal, but we should never imagine that the intellectual goal we are pursuing is the only possible one. It is common to adopt a presupposition for one question that we subject to critical scrutiny for another. In what follows, I will try to be explicit about my key presuppositions, and I will change one important presupposition as I go along to illustrate both methodologically and substantively why it is so important to pay attention to presuppositions.

One of my key presuppositions is that it is possible to distinguish between the question of who has the right to make a decision and the question of whether that decision is morally acceptable. More specifically, I assume that it is possible for a political community to include everyone who ought to be included in a decision-making process and to include them in appropriate ways, and for the decision that the community makes to be morally wrong. To put it in a slightly different way, democracies sometimes act unjustly, not because there was a problem with who was included in the democratic process but because the outcome of that process was substantively unjust. I do not think of this as a particularly controversial presupposition, although, like every moral claim, it could be challenged. It is an important presupposition for this inquiry, however, because it draws attention to one of the limits of the All-Affected Principle.

Another key presupposition is that it is possible to assert that an agent, whether individual or collective, has the moral right to make a particular choice and yet to criticize the moral limitations of the options from which the agent is choosing. Everyone recognizes that the robber who says “Your money or your life” is not enhancing the victim’s autonomy by presenting the victim with this choice. But we sometimes do not notice the ways in which other choices are problematically constrained by entrenched institutions and norms so that who has a say in a particular decision may not get at the most important moral issues in a case.

Consider, for example, a famous passage from Robert Nozick that is often used, including by authors in this volume, to illustrate the limits of the All-Affected Principle. In this passage, Nozick says that if four men want to marry a particular woman, the fact that they (and others) will be greatly affected by

her decision does not matter. Only the woman herself has a right to make that decision. She has a right to act autonomously.

Nozick is right, of course, that respect for autonomy precludes the men from having a claim to participate in the woman's decision and so calls into question incautious, general formulations of the All-Affected Principle, but his construction of the example also obscures the important ways in which her choice is constrained and her autonomy restricted.

Nozick's book appeared in the early 1970s. If Nozick had said then that two women and two men wanted to marry the woman in question and it was up to her to decide which if any of them to marry, the example would not have done the work he wanted in illustrating a widely accepted commitment to individual autonomy and limits on collective choice. At the time, same-sex marriage was not legally permitted. The democratic process had excluded that option. Moreover, same-sex marriage was not thought by most Americans to be morally permissible, whatever their general views on the importance of individual freedom. So, a woman's autonomy with respect to her ability to make her own decision about which willing potential marriage partner to accept was constrained by democratic laws and by the public norms of a democratic society. Indeed, one might argue that because marriage itself was a patriarchal, heteronormative institution, both legally and socially, in the 1970s and because being unmarried in a patriarchal, heteronormative society entailed its own severe legal and social restrictions, to say that a woman facing such constraints was autonomous because she was free to decide whether or not to marry a man who wanted to marry her would be deeply misleading.² In what follows, I will draw attention at times to the ways in which questions about immigration look different depending on what one assumes about the moral legitimacy of the background conditions.

ACCESS TO CITIZENSHIP

I begin with the issue of access to citizenship. The central question is this: On what terms should lawfully admitted immigrants and their children (and subsequent descendants) become citizens of the state in which the immigrants have settled?

Notice two of the presuppositions of this question. First, it simply assumes as a background the moral legitimacy of the division of the world into states, each of which has its own political process through which it exercises authority over immigration admissions and over access to its citizenship. The question here is about access to citizenship for immigrants whom the state has chosen to admit as permanent residents, not about access to citizenship for anyone who wants to live in a state. Second, it assumes implicitly that we know what citizenship means, and, in particular, what it entails as a legal status, at least within certain parameters. If we did not have some sense of that, how could we talk about who was or was not entitled to citizenship? For example, in

democratic states in the modern world, citizenship is normally treated as a fundamental status that entitles one to equal rights with other citizens, with minor qualifications such as age restrictions on the right to vote. Moreover, under national and international law, citizens normally have some rights that noncitizens do not have, such as the right to vote in national elections, and the right to reside in a state whose citizenship one possesses and to enter that state if one is outside it. If citizenship did not have these familiar features, the question of who is entitled to be a citizen might appear quite different.

It would certainly be possible to challenge these presuppositions, either from the perspective of the All-Affected Principle or from some other perspective. Later I will explore one way of doing so. But doing that would make it impossible to explore the particular question that I want to ask, because that question arises precisely in the context of these two assumptions and others, including those previously identified. As I noted above, to explore one question, one must bracket others, at least temporarily.

Note that the question I have posed is *not* a question about whether immigrants themselves should be able to participate in a state's decisions about the terms under which immigrants will be given access to citizenship. There are ways in which the All-Affected Principle could be used to raise that sort of question, as we will see at the end of this chapter. At this point, however, that question is simply precluded by my first assumption. My question is not "who should participate in deciding the terms under which immigrants gain access to citizenship?" but rather "what are the moral constraints upon that decision?" or, to put it another way, "what access to citizenship must a democratic state grant to immigrants and their descendants, if the state is not to violate basic democratic principles?"

How should we answer this question? Let's start with access to citizenship for adults who have arrived as immigrants. My view is that settled immigrants should have relatively easy access to citizenship, in part because people have a right to participate in collective decisions that affect their lives on an ongoing basis and the right to participate fully is normally attached to the legal status of citizenship. Obviously, I am appealing here to a version of the All-Affected Principle. This is one of those cases in which I think the All-Affected Principle is highly relevant to a question about immigration, but it plays that role because citizenship is so deeply connected (in most states) to the right to participate in collective decision making.

Participation in collective decision making is not the only reason why immigrants should have easy access to citizenship, however. As I noted previously, citizenship status carries with it certain important rights under international law, a contingent fact but one important to the moral argument. Citizenship is also the way that we recognize people as full members of a political community in the modern world. In my view, simply living in a democratic society over time normally entitles one to that sort of recognition.

I do not think that the All-Affected Principle, understood as a principle focused on claims to participate in decision-making processes, encourages attention to this concern with the normative importance of social membership. I am not saying that the All-Affected Principle conflicts with the claim that social membership matters morally. The participation and social membership arguments for access to citizenship are complementary. The point is rather that the All-Affected Principle does not include all of the considerations that are morally relevant to this issue.

It is worth noting the indeterminacy of the phrase “easy access to citizenship.” There can be reasonable disagreements about what counts as easy access, and that sort of reasonable disagreement is the kind of thing best settled by democratic processes. So, different states might have somewhat different rules regulating access to citizenship, without violating the principle of easy access.

Turn now to the question of who should gain citizenship at birth. Birthright citizenship poses a puzzle. Why make infants into citizens? Infants are not agents. They are not capable of participating in collective decision making. So, the All-Affected Principle does not seem to apply to them, at least not directly, in the way it does to adults. Part of the answer as to why we make infants into citizens lies in the way the world is organized overall. It is divided into separate states and every human being is supposed to be attached to one state (at least) as a citizen. No one should be stateless. And, as I have noted, we assume that there are important rights that go along with this sort of attachment, even for infants, such as the right to enter and reside. But the requirement that everyone be attached to some state does not in and of itself provide any guidance as to what state anyone should be attached to. Moreover, I think that birthright citizenship has a deeper connection to our understanding of what a democratic political community is. We expect a child born to resident citizens to be an ongoing member of the political community and we grant citizenship at birth as a way of recognizing that belonging from the outset. But if that is indeed the rationale for birthright citizenship, then the same rationale applies to a child born to settled immigrants within the state where they have settled. So, the child of settled immigrants should also be recognized as a member of the community from the outset and should gain citizenship at birth. Again, what I am presenting is a certain kind of social membership argument.

It is probably possible to construct a complementary argument for birthright citizenship from the perspective of the All-Affected Principle, if we interpret the practice of birthright citizenship as a way to securing children’s right to participate in democratic decision making when they reach maturity. I don’t think that this way of defending birthright citizenship would be in conflict with my account, but I’m not sure about its adequacy, and, in any event, I don’t see what it really adds to the social membership argument.

INCLUDING IMMIGRANTS AS FULL MEMBERS

Full membership in a political community involves much more than having the legal status of citizenship. If immigrants or their descendants possess citizenship status but are excluded from the economic and educational opportunities that others enjoy, if they are expected to conceal things related to their immigrant origins in order to fit in, if they are viewed with suspicion and hostility by others, if their concerns are ignored and their voices not heard in political life, then they are not really included in the political community, even if they are citizens in a formal, legal sense. They are not likely to see themselves or to be seen by others as genuine members of the community. In many important ways, they will not belong. So, what is required for the full democratic inclusion of immigrants and their children besides granting them citizenship status?

Promoting the full inclusion of citizens of immigrant origin might include duties as well as rights for both the immigrants and the nonimmigrant population, and it may involve not only formal rules but also things like informal norms, incentives, practices of recognition, and conceptions of national identity. This question about inclusion requires us to explore issues relating to economic opportunity, multiculturalism, social interaction, and many other matters. For reasons of space, I will not spend any time spelling out the details of my analysis here. My main concern is to contrast this way of framing the problem of democratic inclusion with the one that arises from the All-Affected Principle, which is itself often presented as a (the?) principle of democratic inclusion, as the title of this volume illustrates. The All-Affected Principle is usually understood as a principle concerned with the question of who is entitled to participate in decision making, and as such, it does not invite attention to the kinds of concerns I am trying to explore in raising the question of full inclusion. Again, I am not saying that the All-Affected Principle contradicts the idea that these issues matter or precludes concern with them, but only that they are not the sorts of issues that the principle either naturally brings into view or offers much help in addressing once they have been raised.

LEGAL RIGHTS OF LEGALLY ADMITTED NONCITIZENS

Some immigrants are not citizens, at least not yet. How should their legal rights resemble or differ from the legal rights of citizens? Again, this question is posed within the constraints of the presuppositions noted above, and again the question is not the procedural one of who should participate in deciding what these rights should be, but the substantive one of what those rights should be and why.

Let's start with noncitizens who are permanent residents and with the actual practices of democratic states. The striking fact is that permanent residents now enjoy almost all of the legal rights that resident citizens enjoy except for some political rights (voting, running for office) and a few other

relatively minor matters. We tend to think of citizen/noncitizen as the key dividing line when it comes to legal rights, but in reality, the key dividing line is resident/nonresident.³ The current practice of granting extensive legal rights to permanent residents is a major change from the practices in most democratic states in the late nineteenth and early twentieth centuries when there were sharp differences between the rights of resident citizens and resident noncitizens. In my view, this change was something that was morally required because moral claims to many legal rights, especially social and economic rights, derive from membership in society, which derives in turn simply from living in the society over time. (I do not claim that moral reasoning caused the change, however.)

Would the All-Affected Principle help us to see why residents ought to enjoy the same rights as citizens for the most part? Not if the primary focus is on participation in collective decision making. That's the one area where resident noncitizens do *not* enjoy the same rights as citizens, which is why it is important for immigrants to have easy access to citizenship. But many permanent residents choose not to become citizens even when they can do so easily, in part because they enjoy almost all of the legal rights that citizens enjoy except the right to participate fully in the political process.

Immigrants are often admitted on a temporary basis at first and sometimes they are required to leave after a certain period of time. That is, they are not ever on a path to permanent residence. One could ask whether it is morally permissible to admit people with such restrictions on their ability to remain, but I want to bracket that question at this stage of the discussion, simply assuming (as most people do) that states are morally entitled to admit people on a temporary basis.

Assuming that temporary admissions are morally permissible does not mean that states are morally free to treat temporary residents any way they choose. Even with that assumption, we can and should ask, "What legal rights should temporary residents have?" In my view, temporary admissions must be truly limited in time or the state forfeits the (presupposed) right to require the immigrants to leave, and temporary immigrants are morally entitled to a wide range of legal rights, including many but not all of the legal rights that permanent residents enjoy.

I don't pretend that my position is obviously correct or that there is no reasonable basis for disputing it. For example, some have argued that it would be morally preferable to grant temporary workers fewer legal rights because rich democratic states would then be willing to admit many more temporary workers.⁴ I do not have the space to explore the arguments for and against these different positions here. My main point is simply that the All-Affected Principle does not help us address this question.

Some might object that it could. The argument goes like this: Potential temporary workers have important interests both with regard to the terms of their admission and with regard to the numbers admitted. Therefore, the

All-Affected Principle implies that these potential temporary workers should have a say in the tradeoff between these competing concerns.

From my perspective, this sort of argument illustrates the dangers more than the virtues of the All-Affected Principle when one applies it on an ad hoc basis. The All-Affected Principle works best, it seems to me, in contexts in which there are relatively clear parameters for the morally permissible options in some collective decision-making situation (or at least in which one assumes this to be the case for purposes of immediate analysis) and the question is who should be able to participate in identifying those options and choosing among them.

It is not enough to ask who should have a say. Some options should be off the table. If my argument that temporary workers are morally entitled to certain rights is correct, then depriving workers of those rights is not a morally permissible option for a democratic state, even if workers agree to their removal. The fact that some or even most potential temporary workers might consent to forego those rights in order to increase their chances of getting in does not, by itself, establish this as a morally permissible option. Desperate people will agree to almost anything.

Even most advocates of reducing rights for temporary migrants do not go so far as to argue that the bundle of rights possessed by temporary migrants should depend simply on what the receiving state and the migrants would agree upon. They criticize actual policies, like those of the Gulf States, which admit large numbers of migrants with only a temporary permit to stay, no matter how long they remain, and with very limited rights. The fact that no one forces migrants to go to these states does not make that package of policies morally permissible for any state, much less one committed to democratic principles. The All-Affected Principle is a principle to guide our thinking about democratic decision making in contexts of collective action, and it has a valuable role to play in that context. It should not be reinterpreted either as a version of utilitarianism or as a version of libertarianism.

IRREGULAR MIGRANTS

Turn now to the issue of irregular migrants (i.e. people who have entered and/or settled without the state's permission). What legal rights should they have? Again, the background presuppositions of this question are crucial. I have been assuming that states are morally entitled to control immigration, at least for the most part, because that is the conventional view of the matter. So, it is useful to examine the claims of irregular migrants within the constraints of that view, even if one might want to challenge that presupposition in another context (as indeed I do).

Even if one accepts the conventional view, irregular migrants are morally entitled to a range of legal rights. I think that many of these legal rights should be protected by a firewall between those responsible for protecting these rights and those responsible for enforcing immigration rules. I also think that

irregular migrants acquire a moral claim to legal status over time simply by living within a society.

My views on this issue have not gone uncontested, to put it mildly, but the important question for this chapter is not what position is correct but whether the All-Affected Principle helps us to think about this topic of irregular migration. So far as I can see, the answer to that question is “no.”

Neither my own arguments on this issue, nor the counterarguments that I have seen, appeal explicitly to the All-Affected Principle, and the arguments on both sides do not seem to me to flow from or to fit well with a concern for the question of who should participate in collective decisions on this issue. So, I do not see how the All-Affected Principle advances our thinking about irregular migration. Indeed, I worry that the discussion of the issue of irregular migration would be impoverished rather than enriched if one used the All-Affected Principle as a primary lens through which to view the issue.

ADMISSIONS

Turn now to questions about criteria of selection and exclusion of potential immigrants. The conventional view is that states are normally free, not only legally but also morally, to admit as many or as few immigrants as they choose and to decide what selection criteria to use with respect to admissions (e.g. education, skills, age, more distant family ties, etc.). But wide discretion is not absolutely unfettered choice. Even people who endorse the conventional view normally recognize that there are some immigration policies that would be morally wrong. So, what are the moral constraints on admissions policies within the conventional view? (Notice again how this question deliberately accepts the conventional view as a presupposition for certain analytical purposes.)

Set aside for the moment the issue of refugees, which will receive separate treatment below. One important negative constraint on admissions policies is nondiscrimination. At a minimum, most people who see themselves as committed to democratic principles think that democratic states ought not to exclude potential immigrants on the basis of race or religion. It is true that democratic states openly discriminated in the past and sometimes try to discriminate today without acknowledging that they are doing so (as with Donald Trump’s efforts, while he was President, to exclude Muslim immigrants). It is also true that this norm against discrimination is increasingly being subjected to overt challenges in ways that would have been unthinkable in the previous twenty or thirty years. Even so, the norm persists, and this constraint is reflected in various ways in national laws and international conventions, including the need to try to conceal the fact that one is discriminating when one does so.

On the positive side, most people recognize that the immediate family members of citizens and permanent residents have particularly strong moral claims to admission if they are not yet present. There are some qualifications

to this duty and states do not always fulfill it, but, again, the principle is widely accepted, and it is widely reflected in laws and policies.

As always, this brief summary ignores many complications and complexities. But the question for this chapter is whether the All-Affected Principle helps in thinking about the normative limits on admissions policies within the constraints of the conventional view or whether it draws our attention to related but neglected questions. Again, I think the answer is no. The limited constraints on state discretion that I have identified (nondiscrimination and family reunification) flow not from the nature of the decision-making processes but from independent moral values that are supposed to constrain decision-making processes in this area. So, I don't think the All-Affected Principle would affect the debate on the question I have posed.

Does the principle pose new and neglected questions that we ought to consider, perhaps about the ways in which current immigration policies fail to take into account the interests of citizens affected by immigration? I cannot rule out that possibility, but I have to say that I am skeptical that the All-Affected Principle will help to provide much moral guidance. The priority given to family reunification is clearly a response to affected interests, but it protects those interests by trying to remove them, at least to some extent, from the conventional calculations about interest that normally drive immigration policy. The same might be said of nondiscrimination rules.

Set aside these sorts of moral constraints. Some current citizens are undoubtedly more affected by immigration than others, but there are often disputes about what the effects of immigration are and about which effects are legitimately a subject of collective concern. The important general point is that in this respect – i.e. that a particular policy has a differential and contested impact on the interests of citizens – immigration policy is no different from most public policies. If we find a better way than the one provided by existing institutions to create more effective links between the nature and extent of a citizen's ability to influence a public policy and the ways and extent to which that citizen's interests are affected by the policy in question, and if we think that is desirable, as the All-Affected Principle might seem to prescribe, this is likely to require a wide transformation of the overall processes of democratic decision making within the state. In that sort of enterprise, the specific features of immigration policy are likely to seem relatively unimportant.

Perhaps someone will object that focusing only on the ways in which the interests of *citizens* are taken into account is a mistake. What the All-Affected Principle does is to draw our attention to the interests of those who are not citizens but who are affected by this policy. After all, those seeking to migrate clearly have an important interest in whether or not they will be admitted, and those who stay behind also have important interests at stake because they may be benefitted by the emigrants' departure (e.g. through money sent home) or harmed by their departure (the brain drain). Wouldn't the All-Affected Principle require that these people have a say in immigration policies as well?

This question just illustrates why it is so important to be clear about the presuppositions of one's inquiry. Remember that the question I am asking here simply presupposes the moral validity of the conventional view in order to make it possible to see that the conventional view does contain certain (modest) moral limits on what states may do with respect to immigration. But the wide latitude provided to the state by the conventional view can exist only if a state has no moral duty to consider the interests of people outside its own population in constructing its immigration policy. The state is morally entitled to be self-interested (however that self-interest is defined) in what it does with regard to immigration so long as it respects the sorts of constraints I have identified. A state can choose to be generous if it wishes and take the interests of some external group into account, but it is under no moral obligation to do so. Of course, as I have noted before, we can refuse to adopt this presupposition and challenge the conventional view. The All-Affected Principle provides one way to do that, though there are other ways as well, as we shall see. But it is important not to introduce this sort of challenge in an ad hoc way, rejecting the conventional view for some purposes in a given argument but implicitly relying upon it for others in the same argument.

REFUGEES

Before turning to the challenge to the conventional view, I want to mention one other way in which the conventional view is constrained, even on its own terms. Most democrats think that refugees have a special moral claim to admission. Again, that is a view that has been under much sharper challenge in recent years than it was for most of the post-Second World War period, but, as with nondiscrimination, all democratic states have signed international conventions and passed domestic laws recognizing the special claims of refugees to some extent. My own view is that even within the constraints of the conventional view, democratic states have much stronger duties in this area than they have recognized. As always, I do not have the space to spell out those arguments here. Rather, I want to draw attention to one way in which I think the All-Affected Principle can be helpful in identifying an important and understudied question about refugees, namely, the question of who should decide where refugees are to settle when they need a new home.

The All-Affected Principle says that people (significantly) affected by a decision should have a say in that decision. Where one lives is something that has a major impact on most people's lives. The existing refugee regime organizes decisions about where refugees will live in two, very different ways: asylum and resettlement.

Under the asylum regime, which all democratic states have accepted legally, where refugees will live depends primarily on the place where they first ask for protections, which in turn depends upon their ability to travel. So, it is a system that gives almost no voice (in principle) to the receiving state on the question of how many refugees will be admitted and which ones (though, of course, many

states take various steps to prevent refugees from arriving on their territory). How much say the refugees themselves have in this matter depends very heavily on their economic and other resources.

In contrast to granting asylum, admitting refugees for resettlement is an entirely voluntary practice, in which only a few states participate, which involves admitting people who have been recognized elsewhere as refugees and providing them with a new home. This is a process in which the refugees themselves have almost no say about where they will go. Of course, they do have to agree to go to whatever state is offering resettlement, but when the alternative is remaining in a refugee camp, this is often not much of a choice.

A just refugee regime (if I may use that oxymoron) would clearly distribute the responsibility for refugees much more widely. One of the questions one would have to address in thinking about a just refugee regime is how much choice such a regime would provide to the refugees themselves in deciding where they would ultimately live and how much choice it would provide to states in deciding how many and which refugees to admit. Although the prospects for creating anything remotely resembling a just refugee regime seem quite remote at the moment, it can be helpful, nevertheless, to reflect upon these sorts of fundamental questions, if only as a way of providing clearer critiques of some of the efforts to defend existing arrangements. In pursuing such reflections, I think that the All-Affected Principle would provide a valuable reminder of the need to think about who ought to have a say about where refugees would go under a just refugee regime.

OPEN BORDERS

Consider now the possibility of challenging the conventional view in a more fundamental way. Suppose we stop treating the idea that states are generally entitled to control immigration as a presupposition and ask instead: "Is it true that states are morally entitled to wide discretion with respect to who enters and lives within their territory?" If one accepts some basic moral assumptions, such as the idea that all human beings are of equal moral worth and that social institutions must be compatible with that moral equality in order to be justifiable, one might well conclude that the current global order is not morally acceptable. The way the world is currently organized serves the interests of the few (i.e. those living in rich democratic states) much more than the interests of the many (i.e. most of those living elsewhere in the world), and giving states discretionary control over immigration is a crucial factor in maintaining this (unjust) order. From this perspective, asking questions (as I was doing earlier) about what morality requires with respect to immigration while simply assuming the contemporary world as the background context is like asking what autonomy for women requires while simply assuming a heteronormative, patriarchal society as the background context.

In my view, a just world would be one in which the economic and other differences between political jurisdictions would be greatly reduced. In such a

world, people should and would also be largely free to move across jurisdictional boundaries and settle where they chose, and this sort of freedom would not generate huge problems.

This brief summary leaves out lots of nuances and qualifications and does not consider the many important objections to the position I have just outlined. Nevertheless, I hope that it is sufficient to highlight a few points for the purposes of this chapter. First, it illustrates the ways in which one can adopt presuppositions for certain analytical purposes and then move beyond them for other purposes. Second, it illustrates the point that even fundamental critiques of the status quo do not proceed without presuppositions. My open borders position presupposes the moral equality of humans and that social institutions serve certain purposes and require certain sorts of justifications. Third, and most importantly for this chapter, my claim proceeds without appealing to the All-Affected Principle. The argument for a just world with open borders that I have outlined is an argument about what substantive arrangements are compatible with justice, not an argument about who ought to participate in decisions.

Of course, if one probed further, one would quickly have to recognize that there would inevitably be many important areas of indeterminacy, even in a just world, and so questions would then arise as to how collective decision making should be organized to deal with such issues. And in that discussion, the All-Affected Principle would certainly have a place (though it might not be the only principle one would want to consider). For my immediate purposes, however, the important point is that one can construct a fundamental inquiry into, and even a fundamental challenge to, the idea of discretionary control over immigration without relying upon the All-Affected Principle.

There is, however, another way in which the All-Affected Principle can be brought to bear on the open borders debate which does focus on participation in a decision-making process. This is what Arash Abizadeh does in his well-known article on the unbounded *demos*, in which he argues that from the perspective of democratic theory, states are not morally entitled to decide unilaterally on immigration matters because border controls greatly affect the excluded, and so those entitled to participate in decisions about closure include, in principle, anyone who might want to move from one state to another.⁵ This then is another important exception to my claim that the All-Affected Principle does not help much in thinking about immigration.

Abizadeh actually constructs his argument on the basis of a more restricted principle of democratic theory, namely that all those subjected to coercion are entitled to participate in the decisions that coerce them, but he notes that the more expansive All-Affected Principle leads to the same conclusion.⁶ Abizadeh's approach differs from my own, and I think that it adds something valuable to normative discussions of immigration through its strong link to claims to participation. As he makes clear, however, this participation-focused account leaves open to some extent the outcome of such a democratic process.

He contends that democratic principles will almost certainly lead to porous borders but that they might not require open borders in my sense of the term.

As I read Abizadeh, he simply leaves open the question of whether there are reasons independent of democratic theory for requiring borders to be open. So, I don't think that his democratic theory argument conflicts with the reasons I have offered for thinking that open borders are required as a matter of substantive justice. Our arguments are complementary rather than in conflict. On the other hand, from my perspective, the fact that an analysis that starts from a version of the All-Affected Principle leaves open the question of whether or not borders would be open illustrates again the potential dangers in relying only on procedural principles in normative discussions.

This is not a critique of Abizadeh's analysis, which is very explicit about its goals and presuppositions and about the limits of his claims. As I noted at the outset, everyone has to bracket some questions in order to explore others. It is simply a cautionary note again about the importance of substantive claims about justice and the related limitations of the All-Affected Principle, even when that principle advances our understanding in some important respects.

NOTES

- 1 Joseph H. Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013).
- 2 Some would argue that marriage has the same characteristics today. See Clare Chambers, *Against Marriage: An Egalitarian Defense of the Marriage-Free State* (Oxford: Oxford University Press, 2017).
- 3 Citizens who are not residing in the state in which they hold citizenship typically enjoy many fewer legal rights in relation to that state than residents of the state who are not citizens. Indeed, contrary to what might seem implied by the familiar claim that citizenship is the right to have rights, even nonresident noncitizens who are present in a state (say, as tourists) enjoy some important legal rights, such as basic civil rights, and the security of those rights has much more to do with the regime within which they find themselves than with the state in which they hold citizenship.
- 4 See, among others, Martin Ruhs and Philip Martin, "Numbers vs. Rights: Trade-offs and Guest Worker Programs," *International Migration Review* 42, no. 1 (2008): 249–65.
- 5 I have greatly oversimplified Abizadeh's complex and subtle argument. See "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders," *Political Theory* 36, no. 1 (2008): 37–65.
- 6 Abizadeh, "Democratic Theory and Border Coercion," p. 45.