

Public Ethics Radio

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Episode 24. Arash Abizadeh on Immigration

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MATT PETERSON: This is Public Ethics Radio. I'm Matt Peterson.

As the U.S. moves slowly toward a major overhaul of its immigration system, it's a little bit ironic that many of those who would be most significantly affected are being left out of the debate.

Not just the so-called illegal immigrants in the U.S. already, but potentially anyone outside the U.S. who might ever want to come in has some kind of stake in American immigration policy. The same is true everywhere immigration is being debated.

Our guest today, Arash Abizadeh, thinks all those outsiders deserve some kind of say.

Abizadeh spoke to our host, Christian Barry, in San Francisco, California.

CHRISTIAN BARRY: Welcome to Public Ethics Radio. Today we're joined by Arash Abizadeh who's going to be discussing border control and legitimacy of immigration regulations by the state. Welcome to Public Ethics Radio.

ARASH ABIZADEH: Thank you for having me.

CHRISTIAN BARRY: Arash, one of the features of the way in which the world is currently organized is that one of its most basic institutions is that of the sovereign nation state, and that the governments of sovereign nation states are taken to have certain types of rights and privileges with respect to both their members and with respect to outsiders, including prospective members.

One such right is the right to determine who among its nonmembers can become a member, the terms under which people can enter its territory, whether they can live, whether they can work and so on. Whatever we may think about which way particular states exercise that right, do you think that allocating such a right to states can be justified?

ARASH ABIZADEH: It's helpful to start out with the traditional view. The traditional view, which is the state sovereignty view, was that states have the right to determine law, domestically within their own borders. They have the right to determine how they relate to outsiders. And they also have the right to regulate the borders between the outside and the inside.

In other words, a sovereign state is a state that has the right to determine who enters into its territory and who not. And, since it is sovereign, it's the supreme power, the supreme authority, no one else has the right to tell it what to do.

That view of state sovereignty has been challenged over the last period of human history by movements that have championed a set of individual rights from a liberal perspective, talking about human rights, for example, and also democracy. And democrats have argued that rather than the state being the sovereign, rather the people should be thought of as sovereign in some way, so this is a doctrine not of state sovereignty but of popular sovereignty.

And, from a democratic point of view, people nonetheless have continued to agree that the state has the right to determine its borders if it is a democratic state. In other words, the people of a democracy has the right unilaterally to determine who comes in and out of its territory because of a right of self-determination.

I think that's the most widespread view about democracy today. So it's shared by those committed to state sovereignty but also shared by those committed to democracy saying that, well, the democratic legitimacy of the state's exercise of political power just requires that the people have a right of democratic say in setting the laws, and because of this right of self-determination it can decide on its own who it lets in and who it doesn't.

My view is that that's a mistaken view of democracy. And the reason why I think it's mistaken is if we think about what the fundamental principle of democratic legitimacy is, what distinguishes the democratic view from, say, the state sovereignty view or an absolute regime view or a theocratic view, what distinguishes democracy from these is the thought that the exercise of political power is only legitimate if the very people over whom it is exercised have a right of determining the way in which it is exercised over themselves. That's the fundamental idea, I think, of democracy is that those who are subject to the exercise of political power should have a right of democratic say over the terms of its exercise.

And so what's interesting about the case of borders is that you have a case where the state is exercising political powers over both insiders and outsiders. And I think that presents us with a fundamental challenge because if you apply that principle of democratic legitimacy to borders then I think that the straightforward implication is that, in order for states to regulate their borders in a democratically legitimate way, then all those people that they are subjecting to the regime of border control should have a right of democratic say over it. And, in the case of borders, that includes foreigners.

CHRISTIAN BARRY: So, with respect to something like immigration, at the moment it's pretty clear how foreigners don't have a say, right? So the legislation that leads to these sorts of norms which are upheld by the coercive apparatus of the state are decided upon through democratic or, in some cases, nondemocratic processes. What would it mean to actually involve foreigners in such decisions?

I can imagine somebody arguing that, you know, the very existence and sustainability of the democratic state requires this sort of closure and this sort of recognition that a fairly circumscribed body of people is involved in determining the rules that govern

their interactions, their interactions with outsiders. And if we involve outsiders in those decisions, aren't there significant worries about undermining the integrity of the democratic state?

ARASH ABIZADEH: I think you're right, there are worries. But it's important for us to get, I think, what some of the first principles are in thinking about democratic legitimacy. And once we get those kinds of principles down, it helps to orient our thinking about what kinds of institutional arrangements we might envision or imagine that are different from what we're used to.

And, in fact, I think that's one of the functions of thinking about these very abstract principles of legitimacy, of rightness, of justice and so on. It helps to call into question the way that we've done things around here.

So, more concretely, if you accept that insofar as the state subjects you to the exercise of political power, in order for that exercise to be legitimate, that you should have a right of democratic say over it. And if you also accept that the current interstate regimes of border control that we have permit one state to exercise that kind of power over outsiders, and so you think that they should have some kind of a say in determining the regimes of border control of states, you could think of responses to this, institutional responses, that go from the minimal to the maximal.

So the maximal that you can think of is that there would be a global democratic process through which the people of the world would decide on what regimes of border control would look like. That's obviously a very utopian view in the sense that we don't have that around here and it may be very far from what is achievable in the short run. But that's a maximal option, that sort of full-blown cosmopolitan option is maximal.

Let me go to the other end of the spectrum, very, very minimal. This isn't what gets you democratic legitimacy, but the point to make right now is that we don't even have this. You remember when the United States was deciding upon its invasion of Iraq after 9/11 that Colin Powell from the American side at least felt the obligation to justify the American position at the United Nations. It was not the case that the U.S. also felt itself to be obliged not to pursue the invasion if it was unable to convince other states, but at the very least it felt that it had to justify its position in a global forum.

We don't even have that quite yet in the case of regimes of border control, because states feel that they have the right unilaterally to decide their regimes of border control without having to justify it to anybody in some sense. Other than a few exceptional cases, I mean, when we think about refugees, for example, that's an exception to that rule enshrined in international law where states do feel that they have to justify the way that they treat foreigners at the border to the international community. But, by and large, if Canada were to decide, well, this is that you acquire citizenship in Canada, it doesn't feel that it has to justify that to anybody else.

So that's something very minimal which doesn't get us democracy because democracy's not just about justifying your views in a public forum, but it's also about people having an effective say in the decision-making process.

So again, minimally, you can think of different arrangements. There could be interstate arrangements between particular countries that have a lot of close relationships between each other where they would allow each other's citizens to participate in the political process that is designed to determine border laws. You might have transnational rights where the institutions that determine border laws are domestic but that some foreigners have the right to participate in them.

We have instances of that in other areas at the local and regional levels, for example, in various places within the European Union, for example, you don't have to be the citizen of the country to have voting rights in local elections, in regional elections of various sorts. So we know about these kind of transnational institutional arrangements that are also possible and that's sort of again on the minimal end of things. So we can go from minimal justification, to transnational voting rights, to interstate arrangements, to fully cosmopolitan arrangements.

CHRISTIAN BARRY: So one of the principles that you're invoking is this idea that people who are affected by certain decisions or whom power is exercised have a say in these policies. And one concern, again, I can imagine people having is that at the moment, at least, the way in which, say, the Canadian government is exercising power over you and the way in which it's exercising power against prospective entrants from other places who are not Canadians is rather different.

And, as a consequence, you should have more say or you should have more political authority within Canada across a full range of issues than any foreigner. Or you could think that somehow across those issues that simply affect you, you should have a say across those issues that affect the foreigner, they should have a say and they should be equal in the areas where they affect them.

So one way of thinking about it is that you simply sort of give an added weight to the interests and views of Canadians in determining all aspects of the Canadian system of laws and rules or you could sort of cordon out those particular areas where others have an interest and sort of give them an equal say. And you might come up with rather different results if the idea is that people should have some say or some feed in to this process that's likely to have somewhat conservative implications so long as the Canadians still nevertheless have the sort of weightiest

If you go the other way, there might be some concern that, well, even though it seems like it's just over that one issue, this one issue is a really important one, it's going to change everything and including those people, once they've sort of crossed borders, they'll have a whole different set of rights and so on and so forth. So how should we think about that issue?

ARASH ABIZADEH: Well, I think the first thing that I'd say is that I wouldn't put it in terms of the decisions of the state affecting foreigners. I want to make a really important distinction between affecting versus subjecting to the exercise of political power. And the reason for that is because a particular state may make all kinds of decisions that affect foreigners, casually speaking. I mean you might have a trade policy, you might have a domestic economic policy that has effects on markets in other countries, that has effects on people's lives.

I don't think that when you act in this way and affect other people, that they necessarily have a right of democratic say in the decision-making process by merely being affected by the decisions. I think that's a mistaken view that's actually very common within democratic theory. It's mistaken because there are a lot of ways that you can be affected by a political decision-making process where your interests can be taken into account that don't include you being involved in the process.

We have, for example, fiduciary relationships, we have the possibility of having judicial challenges. You know, there might be laws that allow me to challenge laws that affect my interests in ways that are not about democratic participation. I think that we have to be a lot more specific about what way of affecting, if you like, triggers this right of democratic participation and, to my lights, that has to do when you are actually being subjected to the exercise of political power.

In other words, for example, the law is directed towards you. It says, you have to behave in the following way otherwise we will impose these sanctions upon you. And that's important because it allows you to distinguish between a whole set of decisions that the state makes within the domestic sphere that may affect foreigners but, in my view, don't necessarily trigger foreigners having a right to participate in the decision-making process from borders because borders are subject to the state's exercise of political power.

And, actually, borders are particular, they're peculiar in another way. So, you're right, absolutely, to say that the domestic laws within a country structure the lives of the residents of that country in a much more systematic way than border laws structure the lives of people outside of the border. That's true. We have whole set of laws that regulate all kinds of aspects of your life domestically within a particular state, whereas border laws regulate only one type of activity, which, you know, is movement or naturalization or depending on what kinds of borders we're thinking of.

However, what's peculiar about borders is I mean, literally, they're gatekeepers to all the other things that the state is structuring domestically. This is something that is very distinctive about border laws is that they determine entire spheres of jurisdiction within which all those other laws apply. So it's true that the state does not regulate every aspect of foreigners' lives but what it does do is it has a gatekeeper kind of law that keeps individuals out of an entire structured world. In other words, deprives them of the opportunities that are structured within that world.

So there's something very peculiar about border laws and that's why we have to pay special attention to them and that's why, it seems to me that we have reason to, if you like, hive off the question of how regimes of border control are determined from the question of how other kinds of laws are determined.

So I'm not saying that foreigners should have a right of democratic say over all these other domestic laws that structure things internally within the state, but they should have a right over the laws that are the gatekeepers, if you like, between these different political jurisdictions. And, that's because of what I think to be this distinctive quality of border laws.

But, having said all of that, I do think it is important to make distinctions between citizens, residents and nonresident citizens— nonresident noncitizens, for example. And the reason for that is because, on my view of what legitimizes the exercise of political power, from a democratic point of view, I don't think that the best democratic theory is one that is committed to simple majoritarianism. In other words, the best forms of democracy are not the ones that say that whatever it is that the majority has voted in favor of is democratically legitimate. And the reason for that is because there are internal constraints of democratic legitimacy.

If, for example, the democratic majority decides to disenfranchise a minority and disallow them from participating in the political process, they're violating a condition of democratic legitimacy over a period of time. And so, even though it was voted for in favor of the majority, it would be democratically illegitimate, on my view. And because of these internal constraints of democratic legitimacy, I think that we can reject simple majoritarianism.

But there are a whole set of constraints that allow us to think in terms of some people sometimes having more of a say in certain spheres than others. And, in fact, we do this in practice. In a federal democratic system like Canada that I'm most familiar with, it is not the case that every single individual has the same right of democratic say over every political decision in the territory. You have a right to vote within constituencies that are actually different sizes so, depending on whether you're in an urban area or a rural area, the weight, if you like, of your vote is different. We can debate about whether these are legitimate in the particular cases, but I'm just pointing to differences by province, by region, by constituency.

And so it's perfectly feasible to think, I think, that it would be possible to structure a democratic decision-making process in which citizens may have a greater say than noncitizens in determining the border laws. These, I think, are details that become debatable only once you've accepted the starting point and it's the starting point that I'm keen to argue. The starting point just is that there is a right of democratic say of some kind that foreigners ought to have in the case of regimes of border control.

CHRISTIAN BARRY: Good. So let's assume that starting point and have that conversation a bit about the details just because it's interesting to think about what the content would be in the sense that insofar as we believe that everybody who's subject to these laws, which is, by hypothesis, everyone in the world since the border is going to be sort of backed by threats against everybody in the world, what would it mean for them to have democratic say?

Well, you mention a variety of different options. Perhaps an even more minimalistic option than you mention is the thought that, well, they actually already do have a say in the sense that although rules governing border control are not sort of directly decided upon through multilateral organizations and through treaty bodies, there is a sense in which there is negotiation between states all the time. And one of the things that states, including bordering states sometimes, negotiate over is borders and how to police them and how they're going to be effectively regulated and what to do with people who cross them and so on and so forth.

So one thought would be that already there's a sense in which people are represented in some way in these decisions which are decided through international negotiation.

ARASH ABIZADEH: Right. So, as you say, I mean, I brought up the very minimal case of providing a public justification for your policies not to suggest that that is an example of the way that you democratically legitimize the exercise of political power but to show that we don't even have that yet. And you're right, we also do have interstate negotiations that occur between states.

But both negotiations and the mere fact of providing a justification in public, neither of these two is sufficient for democratic legitimacy. And we recognize that within domestic contexts, that it is not sufficient to have different collective actors with differential power in a negotiation, bargaining situation leading to an outcome that we consider be democratically legitimate unless it is done within a legal framework that itself has been determined through democratic processes that respect the equality of all of the actors involved, which we don't have.

So, if these interstate negotiations were occurring within the framework of a system which was authorized through a democratic process, fine. But that's the thing that we're missing and so this doesn't get us there yet.

CHRISTIAN BARRY: Good. So, think about what some of the elements that would need to be included. One natural fear, which I take you to have already been sort of addressing, is the idea that, well, if this power's being enforced against everyone, everywhere in the world, and they're supposed to have a say, well, wouldn't that simply drown out, if we imagine some small, relatively affluent country like Norway?

ARASH ABIZADEH: Right.

CHRISTIAN BARRY: How, even if we gave infinitesimal weight to other outsiders in the say over the, the content of Norwegian border regulations, that would seem very likely to sort of overturn it. Unless there was an additional constraint, that went beyond merely sort of discounting the importance of each person's say, which would be some sort of real constraint on what could be done.

And the question is, what kind of democratic credentials could such a justification have? You know, you might say that, well, the Norwegians have a right to protect certain types of things or— But when we start speaking in those terms, it seems already that we're assuming

ARASH ABIZADEH: We've left democracy.

CHRISTIAN BARRY: Exactly.

ARASH ABIZADEH: Yeah. Yes. So I think that you're actually pointing to one of the most fundamental problems in democratic theory itself, which is not particular to the question of borders. And this is the entrenched minority question. Forget about borders for the moment, but what I think one of the most difficult questions in democratic theory is the following.

It's a classic problem that many people are familiar with in Rousseau's, Jean-Jacques Rousseau's treatment of it, which is that when you have voted, through whatever the

democratic process is, when you've voted for some outcome and you were in the minority that voted against an outcome that was passed by the majority let's say, and let's say the majority rule is the way that you determine this particular question.

So, you were against it but you were overruled by the democratic process. Is that law legitimate in relation to you? Do you have some kind of obligation to obey that law? Does it have any authority over you? And why would it have such an authority over you, if you were against it?

Democratic theorists have often tried to answer it, this question by pointing to a commitment that you might have to the process itself, right. That you may disagree about the substance of the law but because of some commitment that you have to democratic decision-making and conflict resolution and disagreement resolution that you are obliged, because this was the outcome of the process.

That may work as a good argument in many cases, but it presents a particularly thorny problem in the case of an entrenched minority. Because a lot of these arguments about, well, you were in the minority now but your commitment to process or democratic procedure obligates you to the law that you disagree with, presupposed that, over a period of time, sometimes you're in the majority, sometimes you're in the minority, and these will shift.

So the greatest problem, I think, for democratic theory, at least one of the greatest problems is what do you with the case of an entrenched minority? And, in a way, the border situation that you're pointing to is exactly that, right. You're a small country. If you expand, if you like, democracy to think about it at a global level, well, of course you're an entrenched minority. If you're Norway, Asia will always, in terms of numbers, outnumber you, right. And so will they just set policy? Will Asia set the policy for the entire world, is, in a way, one way to ask the question.

And I think that democratic theory, whatever answer that we're giving at a domestic level provides us with resources to answer it at this level of thinking about borders as well. And I'm sympathetic to the kind of answer that says that there is a further requirement of democratic legitimacy. It's not just that outcomes have been determined through a democratic procedure but also that the outcomes were determined through a democratic procedure that itself, in the procedure, intrinsically respects the equality and the freedom of each of the individuals involved in the process.

And then the question is, well, what does that requirement amount to? And I would argue that part of what it amounts to is that you can't respect the equality and the freedom of individuals who will be an entrenched minority within a particular kind of decision-making process unless you do give them certain kinds of distinctive weight in the decision making process, and that's partly why I'm against simple majoritarianism as an interpretation of democracy. And it may also involve giving them certain vetoes over certain kinds of outcomes.

It's not so much that we know beforehand what kinds of laws are outlawed, but it's more that we can see that there may be justification for having procedures that allow certain kinds of minorities, entrenched minorities, to have a veto over certain kinds of outcomes. That's the kind of an argument that I would give. It's what I would think of

as a minority protection clause, if you like, that I think is intrinsic to a fully developed theory of democracy.

CHRISTIAN BARRY: We're going to take a brief break and be back more with Arash Abizadeh on immigration, border control and democracy.

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CHRISTIAN BARRY: Earlier, when you mentioned what you meant by exercising power over someone, it involved the idea that you make a kind of threat, namely that if somebody conducts themselves in certain way, certain costs will attach to that choice, that is that they will be harmed if they do that. There are lots of other areas where you could say that, that we exercise this sort of coercive threat over others, so, for example, with respect to clubs, families, all sorts of groupings of associations of individuals who feel that they have certain obligations to each other, that they have a common life together, and that, in effect, they think that they would be justified in repelling by force if necessary, if someone tried to sort of enter into this group without their consent.

So, some people have tried to model the idea of what's going on in the case of a self-determining community, a nation state, on this type of thing, the idea that it's true, perhaps, that there is a kind of coercion being exercised against prospective entrants but that is no more problematic, as such, than the type of coercive force that I'm exercising on you when I say, no, you can't join us for dinner at this table when I'm sitting down with my family and friends. You've not been invited. We have a right to sort of collectively control this type of association as it moves through space and time.

ARASH ABIZADEH: Right. So, I think, insofar as we're thinking about democratic legitimacy, we have to make a distinction between the private case of individuals who want to exclude, I want to exclude you from my home, for example. This is my home and I haven't invited you, you can't come in. And you don't have a right of democratic say in the process by which my family decided whether to invite you or not, right. That's the fundamental thought, and I think it's a correct thought.

But what we should note is that those relationships occur in liberal democratic societies within the context of a framework of law that has been democratically legitimized and authorized. So all of these kinds of arrangements can be imagined. It's not my view, for example, that every single type of human association has to have a democratic decision making structure.

In fact, it's inappropriate for some areas of human decision making. For example, there may be areas of human decision-making that require market relationships, which are not democratic ones. There may be areas of human relationship that require a command structure. It's perfectly feasible for a democracy, within itself, to have, say, a police institution that decides in a nondemocratic manner. Or judicial institutions that don't mirror all the elements of democratic decision making processes.

So the point there is just that, yes, it's quite feasible within system of democratically legitimized law to have these kinds of relationships, but that's not what we're talking about when we're about interstate relationships because the, the proper analogy would

be, if there had been democratically legitimized international law of some kind that then delegates the right to determine regimes of border control to particular states, that would be a way of democratically legitimizing.

That, that's true. But we don't have that. So, in a way, you're stuck in the situation of somebody who says, you can't come into this territory, and I'm going to coercively enforce this, even though there's no democratically authorized framework of law that allows me to have that kind of a relationship with you.

CHRISTIAN BARRY: So, one, one thing that may not please democratic theorists but which I think some people might be, be drawn to is that what matters in, in these types of contexts is not that political decisions or rights be democratically legitimate but that they contribute to justice.

Now, I know a lot of the criticism of the way in which borders have been constructed, the terms on which people have been allowed to enter, have been criticized for precisely these sorts of justice-based reasons. But I can also imagine the concern that actually extending the democratic say, even with these sorts of qualifications, might ultimately be counterproductive to justice, at least in the long run.

That is, the degree to which it's important to people to think of themselves as having a significant amount of control over what happens in what they could take to be their community, that they not be subject to vast influxes of people, that the natural environment around them not be changed significantly by having many more people there than had been before, that these are part of the things that sort of motivate people, that give them the sense of security, that give them a reason, that are very sort of tied to their sense of worthwhile living, and whether increasing, by anything other than just marginally, this sort of democratic control, whether that might threaten that. And whether that isn't something that's worth preserving.

So the idea would be, yes, look, it's not democratically legitimate, but, nevertheless, any attempt at this point, perhaps because things have been so problematic for so long, to make a democratically legitimate system might end up with a redrawing and a recasting of political communities in such a way that we would find it very hard to recognize our world and it would be very disorienting and problematic.

ARASH ABIZADEH: In one way, I'm sympathetic and open to that kind of an argument and, in another way, I'm not. So the way that I'm sympathetic and open to that kind of an argument is that I think that, as a matter of principle, democratic legitimacy is not the only value that counts. There are other things that count, such as justice, for example. Peace and security is another value that matters.

There's a whole set of values that matter. And so, to have a full blown theory about what we should do in the case of borders, democratic legitimacy is not the only thing that's going to count. So I agree with that.

And there may be cases where, if we were to have a democratic decision-making process, the outcomes of that would be so terrible, in relation to some other values that are urgent, that we care about, that we're willing to sacrifice democratic legitimacy. And that's possible.

So, the way that I'm not sympathetic to it is that, well, first of all, it's very important to see that we have sacrificed something, namely democratic legitimacy. And why that's important is because when, as long as we don't recognize that democratic legitimacy is at stake, right, then it's not even part of the calculation of what we should do, all things considered.

The second is that these kinds of worries about democratic decision making have we have very good historical reasons to be suspicious of this kind of argument because these have been precisely the kinds of arguments throughout the history of the development of democratic political institutions that people have given for not having democratic institutions.

For example, extending the franchise from, let's say, the upper classes to working classes, right. The idea has been, well, if we do that, if we give all of the people within a polity the right of democratic say, all hell will break loose, right, that the society will fall apart because, why?

There was a couple of arguments around. One was that the working classes don't have property and so they will completely redistribute all property because they're the majority, they'll be able to do it in a democracy and, so, it will destroy the economic wellbeing of the polities, right. So you have a clash between democracy and economic well-being.

And the other argument was that they're uneducated and unenlightened and incapable of understanding the complexities of political life, and so we should exclude them from the political process. And, and similar kinds of arguments were given for the exclusion of women. These kinds of arguments for restricting democracy have been given throughout the history of democracy and, for me, it's important that, when they're made that we recognize that history because often the arguments are made for very self-serving reasons, I think.

And I think it's also true about the case of borders. In the case of borders, it's my view that the current interstate regime with border control, one of its primary functions is actually to entrench economic inequality in the world. And if that's one of its primary functions, of course, if you democratize the institution, that may be challenged, it provides it with a political route to be open to challenge. And I think that's the way that I would read the situation on the ground.

CHRISTIAN BARRY: So, now I want to ask things from a slightly different angle. While you've been careful not to say that what the features of a democratically legitimate system of border control would be, it seems pretty safe to that what would come out of anything that could be recognized as a democratically legitimate process would be rules governing membership that might be quite different than the ones we have today.

So not only are it the case that states are unilaterally exercising control over their borders in a way that lacks democratic legitimacy but that the content of the regulations is different than it would be had a democratically legitimate process gone into setting them. So, that seems problematic in the sense that power is being exercised illegitimately over people and in a way that would be quite different if the power were being exercised legitimately.

Now, within states, we usually think that people on whom power is being exercised in that way have rights. Rights of rebellion, for example. That, certainly, they don't need to simply obey these laws, that they don't need to comply with them. They may have certain reasons to comply with them and they might be concerned to comply with them where not complying with them would have certain types of costs.

What would the implications of this view then be to those that are subject to this power but who don't now have a say in it? For example, is there any reason why a prospective migrant to a country should feel in any way compelled to abide by its laws governing the movement of people across its borders?

ARASH ABIZADEH: Right. So, if we look at it in a historical context, it's important to see that the systematic and coercive regulation of movements across territories is a fairly recent phenomenon. Even the use of the passport is something that arises in this systematic way in the 20th century, prior to that people were moving without states attempting to control them in the same way that they do now.

But there's been a further development. So, not only have states, since the 20th century, started regulating the movement of people across territories in this systematic way through the use of passports and border controls and so on but, even more recently in the past few decades, we've seen a shift in the understanding of host societies about the legal status of people who violate the state's attempts to regulate their movement across borders.

Whereas, previously, as a matter of law, these were often administrative infractions, right. You have a visa violation, it doesn't make you a criminal, but more and more the public discourse has shifted over the last few decades to actual thinking of people who move across borders in an unauthorized fashion, not authorized by the state that controls the territory that they move into, as somehow engaging in a kind of criminal activity.

And you see this in the rhetoric where now people are called illegal, illegal immigrants. To equate these people with criminals, I think that this is a mistaken view. In part, because precisely the kind of issue that you're raising, is that I think from the perspective of a migrant who's confronted with these arbitrary exercises of political power over them that they don't have any moral reason to feel obliged to obey those particular laws because they certainly don't have a democratic reason, they didn't have any say over the terms of the regime of border control.

And insofar, as I think you're suggesting, not only are those regimes of border control democratically illegitimate but they may also be unjust to the extent that they fail to recognize some fundamental rights, for example, that people may have. Then they wouldn't have a reason of justice, either.

They may have prudential reasons to try and obey them. In other words, they might get caught and they might get punished but it seems to me that there's very weak grounds for thinking that they have moral reasons to obey these kinds of laws.

CHRISTIAN BARRY: And, presumably, also people who would assist them in doing that would also lack such reasons. So, one of the things that's a real strong

element in discourse about immigration in some countries like Australia, for example, is the idea that, well, we're, we're sympathetic to the refugees or those who are trying to seek access without authorization into the community but the people smugglers, the people who are sort of bringing them, that's who we're against.

Now, of course, people smugglers may act wrongly in various other ways, they may engage in certain forms of unjust exploitation, but insofar as the system of border control is illegitimate and, by hypothesis, unjust, these people, actually, could be looked at as subverting this injustice and democratic illegitimacy by enabling people to gain access to opportunities from which they are being, at the moment, unfairly excluded.

ARASH ABIZADEH: I think I hear the siren of the border police coming after us. Sitting here in San Francisco, the United States.

I think that case of human smugglers is a complicated one for the reasons that you said, precisely because often what the human smugglers are doing is exploiting those that they're smuggling in, in ways that we might think of as unjust. And so there's reason to not be entirely sympathetic to them.

But I think that the aspect that you're trying to isolate, which is that they are serving as an instrument allowing people to move across borders against the regulations that are being illegitimately or unjustly imposed on them, then that is not necessarily reason to condemn human smugglers.

There may be other reasons to be critical about them, and I think that there are. But the mere fact that they are enabling people to move across borders, who want to move across borders, is not a reason for criticism.

CHRISTIAN BARRY: Arash Abizadeh, thanks for joining us on Public Ethics Radio.

ARASH ABIZADEH: Thank you very much.

MATT PETERSON: Public Ethics Radio is produced by me, Matt Peterson, and Christian Barry is our host. The show is supported by the Centre for Moral, Social, and Political Theory at the Australian National University and the Carnegie Council for Ethics in International Affairs. Thanks for listening.